United States Court of Appeals

for the Second Circuit

APPENDIX

76-1275

UNITED STATES COURT OF APPEALS

For The Second Circuit

B P/S

UNITED STATES OF AMERICA,

Appellee,

-v.-

CLARENCE STALLWORTH
and JOHNNY SELLERS,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX OF APPELLANTS

DANIEL H. MURPHY, II,
Attorney for Defendant-Appellant,
Clarence Stallworth,
Office and P.O.Address:
233 Broadway,
New York, New York 10007.
Tele.: (212) 964-7702.

MICHAEL B. POLLACK,
Attorney for Defendant-Appellant,
Johnny Sellers,
Office and P.O.Address:
1345 Avenue of the Americas,
New York, New York 10019.
Tele.: (212) 247-3720.

UNITED STATES COURT OF APPEALS
FILED
AUG 27 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES OF AMERICA Title 18, U.S.C. §2113(a)

DISTRICT 0713 | 20 | 1 | Disp./Sentence | District | Office

76 CR 69

CLARENCE STALLWORTH

defendant 2 of 4 Defdnts

49 | 1 | 76 | 69

DOOLING, J.

U.S. CODE SECTION	OFFENSES	COUNTS
18-2113(a)(d) & 2	Bank robbery and use of dangerous weapon	2

MAGR. CASE NO. 76 M 163

BAIL OR RELEASE: Denied; Personal Recog.; Unsecured Bond; Conditional Release; AMT Set (000) $ 100; 10% Deposit; Surety Bond; Collateral; 3rd Party Custody; PSA; Bail Not Made; Bail Status Changed (See Docket)

U.S. Attorney or Asst.: Pattison

Defense: CJA, Ret., Waived, Self, None, Other, PD, CD.

964-7702
Daniel H. Murphy II
233 Broadway, NYC. 10007

ARREST: 1-23-76 or U.S. Custody Began on Above Charges; High Risk Defn. & Date Design'd; Prosecution Deferred

INDICTMENT: Information 1-29-76; Waived; Superseding Indict/Info

ARRAIGNMENT: 2/10/76; 1st Plea; Final Plea

TRIAL: Trial Set For 4/20/76; Not Guilty; Nolo; Guilty; Not Guilty; Nolo; Guilty; Voir Dire 4/19/76; Trial Begun; Trial Ended 4/20/76

SENTENCE: Disposition 4/21/76; Convicted; Acquitted; Dismissed; Nolled/Discontinued; On All Charges; On Lesser Offense(s); WOP; WP; 6/10/76

		DATE	INITIAL/No.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant			
COMPLAINT		1-23-76	MS/070B

INITIAL APPEARANCE — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled 2-3-76; Date Held; Waived; Not Waived; Intervening Indictment

Tape No. — INITIAL/No. MS 070B

OUTCOME: Dismissed; Held for District GJ; BOND: Exonerated, To Transferee District; Held to Answer to U. S. District Court AT ED NY

Magistrate's Initials: MS 070B

OFFENSE (In Complaint): Attempted Bank Robbery. T-18 USC Section 2113(a) and 2113(d).

Show last names and suffix numbers of other defendants on same indictment/information
PETERSON 1; YOUNG JR. 3; SELLERS 4

V. Excludable Delay (a) (b) (c) (d)

DATE	PROCEEDINGS
1-23-76	AUSA - Pattison. D.C. Jospeh Lombardo, Esq. (Assigned) 16 Court St., B'klyn, NY 855-1770
1-28-76	As per AUSA Pattison - Defendant Indicted - See 76 CR 69
1-29-76	Before WEINSTEIN J - Indictment filed ordered sealed by the Court.
2-5-76	Before DOOLING J - Sealed indictment ordered opened by the Court.
2-6-76	Notice of hearing for arraignment filed.
2/10/76	Before DOOLING,J.- Case called- deft and counsel present deft arraigned and enters a plea of not guilty-status report set for 2/25/76-trial to follow 75CR929
3/8/76	Notice of readiness for trial filed
3/12/76	By DOOLING,J.- Memorandum and Order filed setting trial date for 8/19/76
4/19/76	Notice of motion to dismiss filed
4/19-76	Before DOOLING J - case called - deft & atty present - deftmoves to be released from custody - motion granted - deft to be released from custody on April 21, 1976 at 4:30 PM upon execution of appearance bond without the deposit of cash in the following amount: Deft Stallworth $100,000 deft to report telephonically to the F.B.I. Mon. to Friday

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE ... "SPEEDY TRIAL ACT"

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA Title 18, U.S.C. §2113(a)

wherein the defendants RODNEY CAMPBELL, LARRY PETERSON and

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELA (a) (b) (c) (d)
	at 8:30 am. Deft moves to dismiss count 2 - decision reserved - Trial ordered and begun -Jurors selected and sworn - trial contd to 4-20-76.	
4/20/76	Before DOOLING,J.- Case called- deft and counsel present- trial resumed- trial contd to 4/21/76	
4/21/76	Before DOOLING,J.- Case called- deft and counsel present- trial resumed- substituted set on 4/19/76 is reversed and deft is to remain in custody on original bail terms- trial adjd to 4/22/76	
4-22-76	Before DOOLING J - case called - defts Sellers & Stallworth present - counsel M. Pollack present - trial resumed - Govt rests - deft moves for dismissal of both counts - motions joined in by co-deft Sellers - decision reserved - trial contd to 4-26-76 at 10:30 am.	
4/26/76	Before DOOLING,J.- Case called- deft and counsel present- trial resumed- deft's motion to dismiss count 2 granted- deft's motion to dismiss count 1 denied-deft rests- deft's motion for judgment of acquittal denied- jury retires to deliberate- jury returns and renders a verdict of guilty on count 1- jury polled- jury discharged- trial concluded- motions reserved until sentence date- motion for reduction of bail denied	
4/26/76	Request to charge- entrapment filed	
4-29-76	By DOOLING J - Order appointing counsel filed	
6-14-76	Letter filed dated June 11, 1976 re deft received from Chambers from counsel for the deft (Daniel MurphyIII) and retd to Chambers as directed.	
6-18-76	Before DOOLING, J. - Case called. Deft & counsel Daniel Murphy present. On the jury verdict of guilty on count 1 of the indictment the defendant is committed for six years pursuant to 18:4205(b)(2) to become eligible for parole at such time as the Board of Parole may determine. The Clerk is directed to file a notice of appeal forthwith on behalf of the defendant without prepayment of fees.	
6-18-76	Judgment and commitment filed. Copies to US Marshal.	
6-18-76	Notice of appeal filed. Duplicate of appeal and of docket sheets mailed to C of A.	
6-24-76	Judgment & commitment retd and filed - deft. del. to Warden, MCC, NY.	
6-24-76	Notice of motion filed for an order reducing bail set for the deft. from $100,000 cash bail to$1,500 cash bail pending the determination of his appeal from the sentence of this court.	
6-24-76	Mandate Order received from the court of appeals that the record be docketed on or before July 6, 1976	
6-28-76	Before DOOLING J - case called - deft by counsel Daniel Murphy III moves for reduction in bail - decision reserved.	
6-28-76	Writ retd and filed - Unexecuted.	
7-1-76	By DOOLING, J. - Order dtd 7-1-76 denying motion to reduce bail filed on back of motion.	

(a) (b) (c) (d)

2

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs

[redacted]ENCE STALLWORTH

76 | 69 | 2
Yr. | Docket No. | Def.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
7-6-76	Record on appeal certified and handed to Patricia Dennigan for delivery to Court of Appeals.				
7-9-76	Acknowledgment received from C of A for receipt of record on appeal filed.				
7-15-76	Stenographers transcript filed dated June 18, 1976				
8-6-76	6 stenographers transcripts filed (dated April 19, April 20, one dated 2-10-76 and one April 21, April 22, and one dated April 26, 1976.				
8-9-76	Voucher for Expert Services filed.				
8-11-76	Voucher for compensation of atty filed (Daniel Murphy II)				

Interval | Start Date | Ltr | Tota

3

RJD:TRP:rap
F.#761,088

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JAN 29 1976
TIME A.M.....
P.M.....

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against -

LARRY PETERSON, CLARENCE STALLWORTH, WILLIE YOUNG JR. and JOHNNY SELLERS,

Defendants.

- X

INDICTMENT

Cr.No. _____
Title 18, United States Code, Sections 2113(a) and 2113(d) & Section 2

THE GRAND JURY CHARGES:

76 CR 69

COUNT ONE

On or about the 23rd day of January, 1976, within the Eastern District of New York, the defendants LARRY PETERSON, CLARENCE STALLWORTH, WILLIE YOUNG JR. and JOHNNY SELLERS did knowingly, wilfully and feloniously, by force, violence and intimidation attempt to take from the person and presence of employees of the First National City Bank, 7-24 154th Street, Queens, New York, a quantity of money and other things of value, which money and things of value were in the care, custody, control, management and possession of the said First National City Bank, 7-24 154th Street, Queens, New York, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and Section 2)

COUNT TWO

On or about the 23rd day of January, 1976, within the Eastern District of New York, the defendants LARRY PETERSON, CLARENCE STALLWORTH, WILLIE YOUNG, JR. and JOHNNY SELLERS did knowingly, wilfully and feloniously, by force, violence and intimidation attempt to take from the person and presence of employees of the First National City Bank, 7-24 154th Street, Queens, New York, a quantity of money and other things of value, which money and things of value were in the care, custody, control, management and possession of the said First National City Bank, 7-24 154th Street, Queens, New York, the deposits

4

of which bank were then and there insured by the Federal Deposit Insurance Corporation, and in the commission of this act and offense, the defendants LARRY PETERSON, CLARENCE STALLWORTH, WILLIE YOUNG JR. and JOHNNY SELLERS did assault and place in jeopardy the lives of other persons present by the use of dangerous weapons. (Title 18, United States Code, Section 2113(d) and Section 2)

A TRUE BILL.

Courtney J. DeVita
FOREMAN.

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Form DJ-195
(Ed. 2-7-66)

No. _____

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

_____ Division

THE UNITED STATES OF AMERICA

vs.

LARRY PETERSON, CLARENCE STALLWORTH,

WILLIE YOUNG JR. and JOHNNY SELLERS

INDICTMENT

Title 18, United States Code, Sections
2113(a) and 2113(d) and Section 2

DAVID G. TRAGER
United States Attorney

A true bill,

_____
Foreman.

Filed in open court this _____ day

of _____, A. D. 19____

_____
Clerk.

Bail, $_____

_____

GPO 902-482

THOMAS R. PATTISON
ASSISTANT U.S. ATTORNEY
596-3416

United States of America vs. [M1 FILED]

United States District Court for Eastern Dist. of NY

DEFENDANT: CLARENCE STALLWORTH

DOCKET NO.: 76 CR 69

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date: MONTH June DAY 18 YEAR 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Daniel H. Murphy (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [XX] GUILTY in count one

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C.Secs.2113(a) and 2 in that on or about Jan. 23, 1976, the defendant, with others, did knowingly, wilfully and feloniously , by force, violence and intimidation, attempt to take from the presence of employees of the First National City Bank, Queens, N.Y., a quantity of money and other things of value, which were in the care, custody, control,management and possession of said bank, the deposits of which were then and there insured by the Federal Deposit Insurance Corp.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six years pursuant to Title 18 U.S. Code Section 4205(b)(2) to become eligible for parole at such time as the Board of Parole may determine.

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D. N.Y.

JUN 21 1976

TIME A.M.....
P.M.....

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

Date 6/21/76

7/9

United States of America vs. [illegible] United States District Court for

DEFENDANT: Eastern Dist. of NY

JOHNNY SELLERS — DOCKET NO. 76 CR 69

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH DAY YEAR: June 18, 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Michael Pollack (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY. in count one

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C.Secs. 2113(a) & 2, in that on or about Jan. 23, 1976, the defendant, with others, did knowingly, wilfully and feloniously , by force, violence and intimidatic attempt to take from the presence of employees of the First National City Bank, Queens, N.Y., a quantity of money and things of value, which were in the care, custody, control, management and possession of said bank, the deposits of which were then and thre insured by the Federal Deposit Insurance Corp.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten years pursuant to Title 18 U.S. Code Section 4205(b)(2) to become eligible for parole at such time as the Board of Parole may determine, the sentence imposed to be consecutive to the sentences imposed on March 17, 1972, in the Eastern District of New York.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY
JUN 21 1976
TIME A.M.
P.M.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

BEST COPY AVAILABLE

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

8

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ JUN 18 1976 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket Number 76 Cr. 69

-v.-

HON. JOHN F. DOOLING, JR.
(District Court Judge)

CLARENCE STALLWORTH,

Defendant.

NOTICE OF APPEAL

Notice is hereby given that defendant CLARENCE STALLWORTH appeals to the United States Court of Appeals for the Second Circuit from the [X] Judgment ~~Order or other~~ (specify) _____ entered in this action on June 18, 1976 (Date).

DANIEL H. MURPHY, II
(Counsel for Appellant)

Address 233 Broadway,
New York, New York 10007

Date June 18, 1976

To: United States Attorney
for the Eastern District of NEw York
225 Cadman Plaza East
Brooklyn, New York 11201
Attn.:Paul Corcoran, AUSA Phone Number 212-964-7702

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION - FORM B

▶ QUESTIONNAIRE

[X] I am ordering a transcript
[ ] I am not ordering a transcript
Reason:
[ ] Daily copy is available
[ ] U.S. Attorney has placed order
[ ] Other. Attach explanation

▶ TRANSCRIPT ORDER

▶ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).

Prepare transcript of
[X] Pre-trial proceedings
[X] Trial
[X] Sentence
[ ] Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) [ ] Method of payment [ ] Funds [X] CJA Form 21

ATTORNEY'S signature _____ DATE 6-18-76

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.
6-18-76	7-1-76	15

Date 6-18-76 Signature _____ (Court Reporter)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff

- against -

JOHNNY SELLERS,
Defendant

Docket No.: 75 Cr 68

NOTICE OF APPEAL

This is to serve

NOTICE OF APPEAL

against the sentence imposed by this court and Judge John F. Dooling on June 16th, 1976 against the defendant. Defendant is now without counsel and files this notice PRO SE until counsel will be appointed by the United States Courts of Appeal.

June 22nd, 1976

Johnny Sellers

Johnny Sellers
Ulm Floor
150 West Row
New York, N.Y. 10007

cc.: CoA 2nd Cir

APR 19 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

-v.- :

CLARENCE STALLWORTH, :

Defendant. :

- - - - - - - - - - - - - - - - x

NOTICE OF MOTION

76 Cr. 69(JFD)

S I R :

PLEASE TAKE NOTICE that upon the annexed affirmation of Daniel H. Murphy, II, dated the 16th day of april, 1976, the Indictment herein, and all the proceedings and papers had and filed herein, the defendant CLARENCE STALLWORTH will move this Court before the HONORABLE JOHN F. DOOLING, JR., at the Court House, Court Room 8, 225 Cadman Plaza East, Brooklyn, New York, on April 19, 1976, at 10:00 A.M. for an order pursuant to the Due Process Clause of the Fifth Amendment to the United States Constitution and the supervisory powers of this Court dismissing the Indictment herein for failure to include a conspiracy count or, in the alternative, ruling that after the jury is sworn any later Indictment for conspiracy to commit bank robbery based upon the taped conversations of January 20,21,22,23, 1976, of the defendant STALLWORTH and the other three defendants named in this Indictment would be

void on grounds of double jeopardy.

Dated: New York, New York,
April 16, 1976.

Yours, etc.,

DANIEL H. MURPHY, II,
Of Counsel to JOSEPH J. LOMBARDO,
Attorney for Defendant,
CLARENCE STALLWORTH

By: _____
DANIEL H. MURPHY, II
Office and P.O.Address:
233 Broadway
New York, New York 10007
Tele.: (212)964-7702

TO:
DAVID G. TRAGER, ESQ.
United States Attorney for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Attention: Paul Corcoran, AUSA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

AFFIRMATION

-v.- :

CLARENCE STALLWORTH, : 76 Cr. 69(JFD)

Defendant. :

- - - - - - - - - - - - - - -x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

DANIEL H. MURPHY, II, an attorney at law, duly affirms under penalty of perjury the following:

1. I was admitted to the bar in the First Department of the State of New York on December 13, 1965, and am a member of the bar of this Court. On Wednesday, April 14, 1976, I agreed to try the above matter as counsel to Joseph J. Lombardo, the Court-appointed attorney for the defendant CLARENCE STALLWORTH.

2. On that day, I spoke with the prosecuting attorney, AUSA Paul Corcoran, and received the underlying complaint, attached hereto as Exhibit A, and a transcript of conversations had between the defendants on January 20,21,22,23, 1976. The defendant STALLWORTH is party only to the January 23, 1976, transcript.

3. I have reviewed all four transcripts and the attached complaint. It appears from those materials that the four defendants agreed to rob a bank and that pursuant to that agreement they made preparations to commit a robbery including obtaining weapons and disguises and driving an automobile to a shopping center in which two banks and other stores were located. It also appears that one of the defendants, the defendant JOHNNY SELLERS, exited the car in the vicinity of the banks.

4. The defendant SELLERS was arrested outside of the car. The other three defendants were arrested before they had left the car. Exhibit A hereto.

5. The Indictment herein charges attempted bank robbery(18 U.S.C. §2113(a)) and attempted aggravated bank robbery(18 U.S.C. §2113(d)). There is no conspiracy count.

6. Under the Government's proof as revealed to me to date, there is substantial doubt whether the Government may prove preparation to such a point where it constitutes an attempt. See United States v. Coplon, 185 F.2d 629,633(2d Cir. 1950), cert. denied, 342 U.S. 920(1952); Mims v. United States, 375 F.2d 135,148(5th Cir. 1967); Nagell v. United States, 392 F.2d 934,938(5th Cir. 1968). There seems no doubt but that the Government may make out a prima facie case of conspiracy.

7. We have then a situation where the Government's theory set out in the Indictment alleges a substantive crime which the Government may not prove on the facts and the law. The jury thus is placed in the position where with overwhelming proof of a crime, albeit a crime different from that alleged, must either adhere to the facts, ignore the law and convict, or adhere to the law, ignore the facts and acquit. Further, if the jury in the performance of this difficult duty should acquit, then the Government may re-indict for conspiracy. Such Governmental gamesmanship is in violation of the Due Process Clause, and this COurt, in the exercise of its supervisory power, should dismiss the Indictment with leave to supersede. In the alternative, this Court should rule that any later Indictment for conspiracy based on these transcripts would be void for double jeopardy.

Dated: New York, New York
April 16, 1976

DANIEL H. MURPHY, II

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

Title 18, U.S.C. §2113(a) and §2113(d)

- against -

LARRY PETERSON, CLARENCE STALLWORTH, RODNEY CAMPBELL, WILLIE YOUNG JR. and JOHNNY SELLERS,

Defendants.

- - - - - - - - - - - - - - - - - - X

EASTERN DISTRICT OF NEW YORK, SS:

JOSEPH MARTINOLICH, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, duly appointed according to law and acting as such.

On or about the 23rd day of January, 1976, within the Eastern District of New York, the defendants LARRY PETERSON, CLARENCE STALLWORTH, RODNEY CAMPBELL, WILLIE YOUNG JR. and JOHNNY SELLERS did knowingly, wilfully and feloniously, by force, violence and intimidation attempt to take from the person and presence of employees of the First National City Bank, 7-24 154th Street, Queens, New York, a quantity of money and other things of value, which money and things of value were in the care, custody, control, management and possession of the said First National City Bank, 7-24 154th Street, Queens, New York, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation; and in the commission of this act and offense, the defendants LARRY PETERSON, CLARENCE STALLWORTH, RODNEY CAMPBELL, WILLIE YOUNG JR. and JOHNNY SELLERS did assault and place in jeopardy the lives of the aforesaid bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Sections 2113(a) and 2113(d)).

The source of your deponent's information and the grounds for his belief are:

BEST COPY AVAILABLE

wherein the defendants RODNEY CAMPBELL, LARRY PETERSON and WILLIE YOUNG JR. were observed driving past the above-mentioned bank in a manner which indicated "casing" of the bank.

(2) Observation by your deponent and other Special Agents of the F.B.I. on January 23, 1976 at approximately 11:15 A.M. wherein the defendant JOHNNY SELLERS was observed to exit a car occupied by the defendants LARRY PETERSON, CLARENCE STALLWORTH RODNEY CAMPBELL and WILLIE YOUNG JR., walk past the bank to a telephone booth, wait for the arrival of the car which had driven around the block, signal that car, walk past the bank a second time, and take a position in front of the bank, whereupon the above-mentioned car pulled up in front of the bank and the four above-named defendants began to exit the car.

(3) Recovery from the person of JOHNNY SELLERS, of one sawed-off shotgun; from the person of WILLIE YOUNG JR., one pistol, and recovery from the persons of the other defendants LARRY PETERSON, CLARENCE STALLWORTH and RODNEY CAMPBELL, of woolen ski masks.

(4) Observation of the defendants which revealed that they had their fingers taped and were wearing surgical gloves.

WHEREFORE, your deponent respectfully prays that the above-named defendants LARRY PETERSON, CLARENCE STALLWORTH, RODNEY CAMPBELL, WILLIE YOUNG JR. and JOHNNY SELLERS be dealt with according to law.

Joseph D Martinelli Jr.

Sworn to before me this
23rd day of January 1976

UNITED STATES MAGISTRATE
EASTERN DISTRICT OF NEW YORK

NOTICE OF ENTRY

take notice that the within is a *(certified)*
a
d in the office of the clerk of the within
on 19

Yours, etc.,
ANIEL H. MURPHY, II

Office and Post Office Address
233 Broadway
Manhattan New York, N. Y. 10007

for

NOTICE OF SETTLEMENT

e take notice that an order

he within is a true copy will be presented
ent to the Hon.

judges of the within named Court, at

day of 19
M.

Yours, etc.,
ANIEL H. MURPHY, II

Office and Post Office Address
233 Broadway
Manhattan New York, N. Y. 10007

for

Index No. 76 Cr. 69(JFD) Year 19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

CLARENCE STALLWORTH,

Defendant.

NOTICE OF MOTION
AND AFFIRMATION

DANIEL H. MURPHY, II

Attorney for Def't Stallworth
Office and Post Office Address, Telephone
233 Broadway
Borough of Manhattan New York, N. Y. 10007
(212) 964-7702

To

Attorney(s) for

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Dated,

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Attorney(s) for

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ment or anything else, I solely and only believe that I am under relief unqualified statutory demand to do it. That is the only reason.

MR. CORCORAN: I will certainly look into the possibility of review. I do t know if it exists. As you know, I have mandate blisters all over me now, while we're here, have you not had a chance to look at Mr. Murphy's motion?

MR. CORCORAN: I have not received a copy of it yet.

MR. MURPHY: Friday at 4 o'clock.

THE COURT: It was in your office because we immediately turned the papers over.

MR. CORCORAN: I have seen them this morning. I assume we don't think Mr. Murphy has a jurisdictionable motion at this point where his client at some time in the future subjected to prosecution, but certainly there is no grounds for relief at this point.

I think we are going to have to deny that relief, the law as we can make it out is reasonably clear that conspiracy is not treated as a lesser included count. That if the information, any recent acquittal or indeed conviction on the one or both of the attempted counts, and they should merge, the Government could still indict and convict if it had the

evidence on a conspiracy count.

It's part of the whole complex conspiracy thinking which is not very satisfactory to any of us. You might see one fairly interesting in a recent case, Townes, in the Sixth Circuit, 512 Federal Second 1057, where the Court made the Government elect between a section 2 count and a conspiracy count. The Court of Appeals said I'll come to that separate offenses, one can be tilted on top of another. I think sola voce there is a total identity of evidence and the cases, there are cases that hold that for evidentiary purposes the Court can even charge conspiracy to the jury, in a section 2 case, so if you get a "little hearsay" in evidence in a joint substance crime case and just submit the joint crime to the jury and may not submit the undercharge conspiracy count to the jury. Presumably there again if there were a conviction or acquittal they could thereafter indict on the conspiracy and of it. Now, I have a little Perkins on criminal law on page 534 says that if a conspiracy is not a lesser offense that works, which defendant might be convicted, although it's not mentioned in the indictment and has the acquittal of the compensated crime is no bar to conviction for the conspiracy to commit.

Ordinarily in our type of Section 371 conspiracy

is that doesn't help matters either because the overt act is not considered identical with proof of an attempt. You have to prove an overt act, B, also prove an attempt, but as you can see again, it's all tied up with the thinking that conspiracy is a separate and additional offense, which has the consequence of enhancing punishment.

In other words, they readily in a 213 A case the sentence appropriate to the attempt of bank robbery can be closed and on top of that a sentence for conspiracy, on the idea that since one man can rob a bank, you enhance the punishment if you organize a group to rob the bank. It just makes it, it's like the difference between A and B, a single man can be guilty of A and B. If he joins the efforts of another to his own conspiracy then that is like carrying two guns, it adds another five years maximum in probable penalty. If you remember in our former conspiracy charge you also say it's a think crime. Now if you look at other sections like Section 9151 you see conspiracy used in a different way. Where they say anyone who conspires or attempts to or does, you see there you feel that they have got a sort of ascending scale of two steps leading up to absolute commission.

Now, that is where you would think surely there

should be a lesser in the event of failure, but in the event of success it's never a lesser included offense, and from that they have drawn the conclusion it doesn't emerge that in the case of failure it isn't a lesser included offense either, though rationally one might think, sure, it's because conspiracies fall short of an attempt frequently and it should be a lesser included count. Where the effort fails there is no bank robber or there is no theft from interstate commerce, but just a threat, but just a conspiracy could do it, everything is moved into place, it doesn't go quite far enough to constitute an attempt, but they did drive to the place, did line themselves up, parked the car in the right place next to the correct red light and all that. The thing fails because the truck drivers sometimes run red lights and this one did.

I do think, though, that the point was service to discussion, because if there were an acquittal for your man and they did indict him I am very much interested to see what would happen next.

MR. MURPHY: I think I would rather talk to you, listen to you talk about the problem, but I would say a couple points on this that I just add.

One is a question like most law in the context of the facts, when we find the facts that are proven

in this case it might shed more light how we should alunde the facts. We have a problem which is similar to your problem here, because there are four days of transcript of which my defendant Stallworth is only present on the fourth and the reason you're going to get into three days, if you can, is on a joint venture and/or agency type theory.

Again, the incohate nature of this crime you really have it merging into your conspiracy area and you're bringing up this problem.

THE COURT: U.S. against Hoffa. 3849 Second 20 at page 41, which there was no conspiracy count, the charge was, I think, an endeavor to corrupt a jury, something of that sort.

But Judge Wilson at trial charged the jury on the conspiracy for the purpose of enlarging the area of -- from which could be drawn so and so declaration and all that. But did not, of course, submit conspiracy as something the jury could convict on. That was held to be correct procedure, the Court said it was the function of the Court to define the term, conspiracy, and instruct the jury as to the circumstances under which the out of court statements were admissible. In other words, in the case in which conspiracy was not charged, they in the indictment, they let the Court

Court instruct the jury on conspiracy for the purpose of getting a hearsay statement, so-called, into the record.

A similar case in the Fifth Circuit came up from the State Court, Gueldner against Hytud, 434 at Second 1302 - 1308, there the Court said the three defendants were jointly charged with substance offenses of possession and sale, I think it was narcotics. The trial Court charged the jury on the conspiracy as well. Neither other claim nor the claim that the conspiracy charged was erroneous as a constitutional dimension and the lower Court had said while conspiracy was not given to the jury, it was charged to them for evidentiary purposes, and the Court said there -- whenever two or more co-defendants are jointly charged with the commission of a crime, this necessarily involves a conspiracy. 1168 and 1175. U.S. against Sain, 49 F Second 683 at 692, it takes a somewhat healthier view, says all these out of court statements, so-called hearsay statements, come in, any joint crime doesn't have to be conspiracy, inherent to Judge Hand's view the conspiracy has nothing to do with the receipt in evidence of co-actor statements germane to the commission of the offense.

MRS. PIEL: There may be a change in the whole

Here you're stepping two steps away from that, you're saying I intended to put somebody in fear and that person therefore would have been justifiably put in fear if this crime had really come to fruition.

THE COURT: Here is a man says if I robbed a bank using the kind of sort of instrument in which you can see, because it has one of those merry-go-rounds on, and it's loaded, and you go in and start going like this with that, I'm going to put people in fear. And if it's really loaded, they are going to be justifiably and reasonably in fear or else I better not try it.

In other words, if you're planning a robbery you never, I suppose, plan a shoot-out, but if it's going to be like that, then you make other plans, try other banks. But, you go in intending to put people in such fear that you know probably that they just stand there and shiver while you get the money.

Now, if that's what we're slanting, and if you do everything except get through the glass doors because at that point someone stops you. My problem was that youwould never get past the second paragraph of 213A, if what you say is true because intimidation is the same idea.

If we could distinguish between the conception of a plan and the imitation of a plan, the argument

would be -- we have to stop this argument as soon as the jury comes in.

MR. MURPHY: I would put it on the record anyway that the argument is there may not be an attempt 2113 when you have it still in it you also have an attempt of 2113A. You can't have an attempt to put people in danger, you either put people in danger --

MR. CORCORAN: What it prohibits --

THE COURT: Look at the language, it's a separate point. I think whoever in attempting to commit, does the argument is sufficient to read D this way. Whoever in attempting to commit does in fact assault or jeopardize the life of someone --

MR. CORCORAN: Any person?

THE COURT: In the bank.

MR. CORCORAN: Not in the bank, your Honor, and that would include FBI agents and police officers necessarily because of their attempt had to put their own lives in jeopardy to make the arrest. In attempting to rob this bank the defendants put in danger the lives of the people in front of that bank during the course of that arrest by use of a dangerous weapon.

THE COURT: I think you have given him only one.

MR. MURPHY: I don't think that will hold up.

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THE COURT: He is giving you your point but don't forget what happened outside the bank.

MR. CORCORAN: There was no placing the lives of the bank employees in danger?

THE COURT: He is saying, but don't forget maybe what happened on the outside of the bank is not exactly what your client told you, is that it?

THE WITNESS: They were armed.

MR. CORCORAN: And in being armed, a loaded shotgun and pistol, the lives of persons were placed in danger during the attempt. I think that satisfies the --

MR. POLLACK: There is a specific statute clause which specifically covers what Mr. Corcoran would like this sub-section to cover.

THE COURT: That would not have covered it if this was New York City Police Department personnel who sprang the trap.

MR. CORCORAN: Or anybody else who might have been on the street at the time.

MR. POLLACK: They would not have been placing the life in danger in attempting to rob the bank.

THE COURT: What he says is Mr. Corcoran's argument, is when the FBI men moved in they knew they had to be on the alert because if, believed, they

would have to be very much on the alert because if things were going according to what they had believed the man to be, these people were armed and dangerous. So, they were in the position to be assaulted and their lives to be jeopardized and they knew it.

The only question is then, what happened?

MR. CORCORAN: My argument is that if there is an attempted bank robbery they also placed lives in jeopardy by using dangerous weapons.

THE COURT: Because they had them with them.

MR. CORCORAN: Because they were armed and attempting to rob a bank, and because of that attempt lives were placed in jeopardy.

MR. MURPHY: If that is his argument, I would say it is not sufficient enough under 2113.

(Continued on next page)

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THE COURT: It's altogether different, if the evidence were that one man got out of the passenger seat with a sidearm or shotgun and that is the F.B.I. man approached, had assumed he was a passerby until he saw his gun and assaulted him with the weapon. So much will depend on what the evidence is precisely of those rules.

MR. CORCORAN: I think the position requires some clarification, I would like to discuss it after we pick a jury.

(The jury selected but not sworn.)

(Whereupon the jury was recessed until April 20, 1976, at 10:00 A.M. and the following arguments of counsel occurred outside the presence of the jury.)

MR. POLLACK: First of all, Judge, I am led to believe that the tapes consist of approximately eight hours. I don't know how much of that is indicative of one another.

MR. CORCORAN: The tapes themselves last approximately six hours. They were taken over a course of four days, much of the discussion on the tape is relevant to an attempted bank robbery, because the activity, the defendants were casing various banks and discussing the bank robbery.

The length of time the tapes are however may be

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may have been the gun with Mr. Campbell, don't indicate he supplied them with the necessities, it showed a pattern of behavior.

THE COURT: You mean the official recollection, refresh their recollection. They used masks and surgical gloves before as well as weapons on every occasion, so bringing those things up was not consistent with entrapment, but with previous position on the part of all the defendants.

Here what we're up against seems to me, is that up to a certain point there can't be much disagreement about what was done and what words to the extent of human recollection, electronic recordings were used in connection with what was done.

Next thing we're concerned with is did the whole set of actions get to the point where it constituted an attempt, or was it headed off shortly after that point. Now, here I suppose what we're -- The Government's argument is that if anybody's going to get the idea that the Federal Government being in, as it were, on the organization of this episode, makes a difference and there isn't any reason to think that the jury might not think that, because the defense Counsel will encourage them to think that. Then the Government is entitled to diminish the effect of that kind of suggestion to the jury.

The only real question is order of proof, and it seems to me that if the case has implicit in it an outline then I suggest are really the factual structures all given and the questions that arise are solely those to read it at the legal level or at the commisserated level, if you want to call it that, the extent of the Federal involvement covers the case. We know that is going to be in the case, well then, in that situation I think it doesn't come in perhaps, or hint in the end. It's coming in wholeheartedly, both feet. It seems to me that since we are talking about ordinary proof you might as well start out where we're going to end up, and that is the whole thing, and that will prevent having a long direct, a long cross to elicit what Campbell on direct followed by a long redirect, that drags out the whole story, and followed by an endless recross.

That is all we're talking about. It is all going to come out to one difference, and if that is the way it is going to be and has to be, it seems to me the sensible course is to take Campbell through the whole thing and then let defense Counsel enrich the materials on cross, so as to knot their judgment, and you do what you can on redirect. It's the sensible way to do it. Now, is there something that calls on us

to deal now in a special day, with the transcript and the recording, we'll have to do it. How long will it take? What I want to know, should we send the jury home till tomorrow or what?

MR. CORCORAN: I think, your Honor, that the Gvoernment would be in a position if it were forced to interrupt its direct examinaation.

MR. MURPHY: I might interject.

THE COURT: You are going to put Campbell on, aren't you?

MR. CORCORAN: Yes.

THE COURT: You can use the tape to guide you with your examination of the witness if you know what is on the tape. And therfore, to that extent, know what the sequence of the events were, what he remembers and whether or not he -- I don't see what he play the tape, then the real testimony is what Campbell remembers. He can place the people, and the tape suggests a check on Campbell and refreshes his recollection.

MR. MURPHY: I think the tapes are corroborative, I think we should begin the trial, as far as the transcript goes, both of us, or speaking for myself, I trust the FBI to accurately transcripe the tape as far as any human being possibly can.

THE COURT: One thing we can do is have a spot

check run or whatever you want to get some feel of how good, or how bad, it is.

MR. POLLACK: The shortest tape is the 23rd, is it not?

MR. CORCORAN: It's the shortest by far, not the most damaging.

MR. POLLACK: How long would it take to run the 23rd?

THE COURT: Where is the equipment now?

MR. CORCORAN: We have a tape recorder, your Honor, but the equipment for the jury is not here.

THE COURT: Where is the tape recorder?

MR. POLLACK: We can take an extra half hour for lunch, take an hour and a half.

THE COURT: We can open and then, depending on what time it then is, perhaps introduce Campbell with his background and then go to lunch or --

MR. CORCORAN: The only difficulty I see is based on the position we were in yesterday. I don't think the Bureau will have the jury's equipment here till tomorrow morning.

THE COURT: That is all right, because Campbell will be on quite a while.

MR. CORCORAN: I would have to do my direct of Campbell without the tape, then.

THE COURT: I mean he is your witness, anyway, and you have the transcript to refresh your recollection from in examining him as a witness, and use it with your trial notes on the same theory, which you can also use a Persian rug to refresh your recollection, you can use a transcript to refresh a man's recollection, and that is the place where some countenance is called for. But since the jury is going to hear the tapes perhaps at some point in the trial, unless some other arrangement is worked out, they'll see where the tapes are at variance with the transcript, right?

MR. MURPHY: That is correct. In fact, as I understand the rules of evidence, your Honor, the tape is the evidentiary material and not the transcript. It's merely an aid, another point, the jury makes the determination.

THE COURT: It's Campbell with the witness because he is under oath and electronics is not.

MR. MURPHY: One housekeeping point. I think that objections made by any of the defense Counsel adhere to both defendants.

THE COURT: I assume if one lawyer objects to something the objection is the objection of both, in the absence of disclimer, because there are times when one lawyer emphatically wants something in that the

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other wants out. Like for example, where the one fellow is heard to say, I am out of this altogether now, I am going home.

MR. MURPHY: That doesn't seem to be on the tape.

MR. POLLACK: We're not going to sit Thursday morning. Mr. Corcoran has an engagement at the Court of Appeals.

THE COURT: Can you get somebody else to argue the damn thing?

MR. POLLACK: And we're not sitting Friday. My concern is my commitment with Judge Metzger. If it comes to that, will the Court make the necessary communication?

THE COURT: I have to. If not, he'll kill me, because he knows where you are.

(Jury present.)

(Jury sworn by the Clerk of the Court.)

MR. CORCORAN: Your Honor, Mr. Foreman, ladies and gentlemen of the jury. As I indicated yesterday, my name is Paul Corcoran. I am Assistant U.S. Attorney for the Eastern District of New York. It's my obligation to present the Government's case to you.

As Judge Dooling indicated yesterday during voir dire, it's an attempted bank robbery trial that the defendents Johnny Sellers and Clarence Stallworth

A The first of the First National City Banks was on Union Turnpike and the second in Queens, and the last one was on Northern Boulevard in Queens.

Q You participated in four bank robberies between June and September '75?

A Correct.

Q Did there come a time you entered into an agreement with the United States Governmat with your participation of those robberies?

A Yes.

Q When did you enter into that agreement?

A January12, 1976.

Q January this year?

A YEs.

Q Tell the jury what agreement you entered into?

A I spoke to the United States Attorney Mr. Pattison and he told me that if I cooperated with the agent, that I would be granted immunity on my prior bank robberies.

Q And what cooperation was asked of you, Mr. Campbell?

A That I cooperate with the agents as far as any other Federal offenses that I might commit after that time.

Q Did you in fact enter into that agreement and give the Government your cooperation?

A Yes.

Q That was on January 12th, 1976, is that correct?

A That is correct.

Q Do you know the defendant Johnny Sellers?

A Yes, I do.

Q Do you see him here in the courtroom today?

A That is him right there.

Q Indicating who?

A The guy in the green jacket.

MR. MURPHY: May we approach the bench before he asks the next question?

(Whereupon a side bar was held outside the hearing of the jury.)

MR. MURPHY: Mr. Stallworth says he doesn't recognize the witness, ask him if he recognizes anybody else in the courtroom. He said he --

MR. CORCORAN: Ask him if he knows Stallworth.

THE COURT: That is the point of his question. He says he doesn't recognize --

MR. CORCORAN: They were arrested in a car together by the FBI. There is no question these are the same people.

MR. MURPHY: We're not talking about the same people, we're asking if he knows him. If he could

just recognize him four months later I'm not challenging I'm questioning on leading questions the attorney was going to ask.

THE COURT: Conform please.

(Whereupon the trial proceeded in open Court.)

Q How long have you known Mr. Sellers, Mr. Campbell?

A About four years.

Q Do you know him by any other name other than Johnny Sellers?

A Torch.

Q Tell the jury, besides Mr. Cavanaugh, whether you recognize anybody else in the courtroom here today?

A I recognize Clarence Stallworth.

Q Indicating who he is.

A He is the guy in the beige jacket.

MR. MURPHY: Identification conceded, your Honor.

Q How long have you known Clarence Stallworth?

A I met him on January 23, 1976.

Q Do you know Mr. Stallworth by any name other than Clarence Stallworth?

A Country.

Q Did you have occasion, Mr. Campbell, to meet with Mr. Sellers on January 16, 1976?

A Yes. I did.

Q Where did you meet with Mr. Sellers at that time?

A In a bar named Sports on Northern Boulevard.

Q Who was present when you met him?

A His niece.

Q Approximately what time did you meet?

A About 11:30.

Q In the evening?

A Yes.

Q How long had it been since you saw Mr. Sellers, at that time?

A Two months.

Q Did you have a conversation with him at the Sports Bar on January 16, 1976?

A Yes.

Q What didhe say to you and what did you say to him?

A We discussed what had been happening with me.

MR. POLLACK: I ask the conversation be repeated with attribution --

THE COURT: Don't just summarize, but as nearly as you can tell the jury what each person said as nearly as you can remember?

THE WITNESS: I related to him that I had gone

to the hospital again for my arm being broken, and that I had been incarcerated again, another parole violation and that was a lot of the reason for why I was out of touch with him over those two months.

Q What if anything did Mr. Sellers say to you?

A He related -- he told me that he was not doing well. At that time the group, or himself, was unable to get any rods, any cars to do any jobs. I told him of a fact that I would have my people to rent a car the following week that I would be using.

Q Did Mr. Sellers refer to not being able to get a car for any jobs, what was he referring to, Mr. Campbell?

THE COURT: You understand what he is referring to, or did he say just what he was referring to?

THE WITNESS: You want to know what he was referring to?

THE COURT: What you understand he was referring to?

THE WITNESS: He was referring to another robbery that is what I understand, it wasn't said, but implied.

Q You said you had a car at that time?

A Yes.

Q When did you next see Mr. Sellers?

A On the -- well, that following morning.

Q Where did you see Mr. SEllers then?

A Northern Boulevard.

Q That would be the 17th of January, correct?

A Correct.

Q Any conversation with him at that time?

A Just, he said when I did get the car to come around

Q Did you have occasion to get in touch with Mr. Sellers thereafter?

A That following Tuesday.

Q You mean the 20th of January?

A The 20th.

Q What time did you see Mr. Sellers that day?

A That morning, say about 9:30, 10:00 o'clock.

Q Where did you see him, Mr. Campbell?

A I saw him at Brother Cole's house.

Q Who is Brother Cole?

A He is a former partner of ours.

MR. POLLACK: Objection, your Honor, as to the reference as to who Brother Cole is. It doesn't help me at all.

THE COURT: Just identify Mr. Cole, who was he; the first time.

THE WITNESS: I don't know his first name, I just know him as Brother Coles.

Q Where was Brother Coles living at the time?

A Elmhurst, in Queens.

Q Who was present when you met Mr. Sellers at Brother Coles house?

A A friend of Brother Coles, Wayne and Brother Coles' woman, Yvette and Johnny Sellers.

Q Did you have a conversation with Johnny Sellers that morning, January 26th?

A Yes.

Q What did he say to you and what did you say to him?

A He said the fact the three of them, Wayne, Brother Coles and himself were supposed to do a bank robbery that morning, but the plan fell through because a car wasn't made available that was supposed to be available.

Q Did they tell you who was going to get the car?

A Somebody I didn't know. But, they asked me then if I had the car that I had spoke about earlier and I said I did.

They asked me if that was available to use that and I told them no.

Q What car were they referring to Mr. Campbell?

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A A car that I got from the FBI.

MR. CORCORAN: Can I have these marked Government's Exhibit 1, 1-A and 1-B?

THE CLERK: Marked for identification.

Q Mr. Campbell, I show you Government's Exhibit 1, 1-A and 1-B and ask you if you can identify that, that is depicted in those photographs?

A That is the same car.

Q From the FBI?

A Yes.

Q When did you get that car from the Bureau?

A On the 20th of January '76.

Q To your knowledge was that car equipped in any special way?

A Yes. It had a monitoring device and a tape recording device.

Q And you consented to the Bureau recording your conversation in that car, Mr. Campbell?

A Yes. I did.

Q When did you give that consent; as best you can recall?

A Within the week of the 12th.

Q Now, you indicated that you told Mr. Sellers that that car was not available, is that correct?

A At that time.

Q Did you tell him why?

A I told him I rented the car in my people's name and I didn't want the car to be traced back to them.

Q Did you tell them what, if anything, you were going to do in regard to the car?

A I was going to turn the rented car back in and steal the car back so it could be used for something.

Q This is what you told Mr. Sellers on the morning of the 20th, is that correct?

A Yes.

Q But you in fact had not rented the car yourself, had you?

A No.

Q How much time did you spend with Mr. Sellers on that day, Tuesday, January20?

A Till late that afternoon.

Q Did there come a time when you left Brother Coles house?

A Yes.

Q Who left with you?

A Brother Coles, Wayne, Johnny Sellers and myself.

Q What if anything did you do then?

A We started riding around casing other banks in

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Queens.

Q What banks did you case on Tuesday the 20th, as best you can recollect?

A I cased one bank on Northern Boulevard, a City Bank. A Chase Manhattan on Union Turnpike and another bank on Liberty Avenue, I am not sure what branch.

Q Did you discuss these various banks as you were casing them?

A Yes.

Q Did you have occasion to participate in a bank robbery that day, Tuesday the 20th?

A No.

Q What occurred?

A What occurred, we just cased those banks and formulated a prospective of which ones would be possible, how to go about doing it.

MR. POLLACK: I ask the witness attribute the speaker of what comments he's referring to.

THE COURT: If you can, as well as you can, Mr. Campbell, tell the jury what was said and who said it. Rather than just say what the upshot of it was in a summary way tell the jury as well as you can remember who said what.

Q In the casing of the banks, the first one on

Nathern Boulevard, City Bank, apparently that was the bank that was supposedly robbed that morning.

MR. POLLACK: May I ask not for conjecture, but who said what to the witness?

THE COURT: What their information was, because it had an influence on his conduct he has indicated, is that right?

THE WITNESS: That is right.

THE COURT: What were you informed about and what was your response?

THE WITNESS: That that particular City Bank was much like the First National City Bank on Union Turnpike that I had participated in. I think that was August 1st and that the distance from the door to the teller cages by Brother Coles was much the same, and the format of the bank was much the same.

Q Who drew the analogy between it?

MR. MURPHY: Your Honor, may I have a limiting instruction as to these conversations?

THE COURT: Well, as you may have noticed Mr. Stallworth's name has not been mentioned at all, that is being a person that knew anything at all about the situation or was present at any of them. In consequence he is not concerned in this evidence, or will he be

unless at some later stage off the case it is brought home to him.

Q Who drew the analogy between the City Bank and the First National City Bank robbed on August 1st? Who brought out the similarity?

A Brother Coles.

Q In any event, you didn't rob a bank on the 20th, did you?

A No.

Q Did you have occasion to meet with Mr. Sellers the following day, Wednesday the 21st?

A Yes. I did.

Q When did you meet with him then?

A At his wife's apartment, Alden Street.

Q Meet with anyone on the 21st?

A Yes. I met with Larry Peterson later that day and William.

Q You met with all these people at the same time?

A No.

Q You were altogether at one point?

A Yes. Towards the afternoon.

Q Approximately what time did you get together?

A About 4.

Q Where did you get together, Mr. Campbell?

A Riding around and I don't remember exactly -- I remember picking Larry Peterson up on Northern Boulevard. He was walking down Northern Boulevard, I don't know exactly where we picked Willie up.

Q Was Johnny Sellers with you when you picked him up?

A Yes.

Q There came a time when all four of you were riding around, isn't that correct?

A Correct.

Q Were you riding around the same car you were riding around the day before?

A Correct.

Q The car with the monitoring device?

A Correct.

Q Were there any FBI surveillance teams in the area?

A Yes.

Q You were meeting with the FBI on a daily basis at that time?

A Yes.

Q Where then did you, Mr. Sellers, Mr. Peterson and Young go in that car on Wednesday the 21st?

A That afternoon I say about 5 :30 we went to a United America's Bank off Roosevelt Avenue in Queens and we

cased that bank.

Q You say you cased a bank. Tell the jury what you mean.

A Well, we saw from the outside of the bank that the windows -- you couldn't see inside the bank from the sidewalk. That it was a relatively small bank, that there was on camera located over the door and it looked like a pretty good job.

Q Any conversation with Mr. Sellers in the area of the United America Bank on the 21st?

A No.

Q Did you formulate plans with regard to that bank?

A Yes.

Q What were they?

A We were going to rob it the next morning.

Q Who was to be a participant in that robbery?

A Willie Young, Larry Peterson, Johnny Sellers and myself.

Q Where, if anywhere, did you go after casing that bank on the afternoon of Wednesday, January 21st?

A We went to Modell's to get some ski masks.

Q Where is that Modell's located?

A Main Street, Queens.

Q Flushing?

A Flushing?

Q Who went into Modell's?

A Willie Young, Larry Peterson, myself and Johnny Sellers.

(Whereupon plaintiff's exhibits marked for identification as Government's Exhibit 2, 2-A and 2-B.)

Q Mr. Campbell, I show you Government's 2, 2-A and 2-B. Can you identify those exhibits?

A Yes.

Q What are they?

A The ski masks that we took from Modells.

Q On January the 21st?

A Yes.

Q Who was present when they were obtained?

A Willie Young, Larry Peterson, Johnny Sellers and myself.

Q What if anything occurred after you obtained the ski masks, Mr. Campbell?

A I'm not sure of the order in which they took place, but from there we went to the Booth Memorial Hospital.

Q Who suggested going to Booth Memorial Hospital?

A Johnny Sellers.

Q For what purpose?

A To obtain rubber surgical gloves.

Q Did anyone indicate why you needed rubber surgical gloves?

A No. It was understood.

Q Have you ever had rubber surgical gloves before?

A Yes.

Q For what purpose?

A Robbing banks.

(Government's Exhibits marked for identification as 3, 3-A, 3-B.)

Q Did you go into Booth Memorial Hospital to scan?

A No.

Q Who went into Booth Memorial?

A Johnny Sellers, Larry Peterson and Willie.

Q What if anything occurred thereafter?

A They came out with the surgical gloves.

Q I show you 3, 3-A through 3-D and ask if you can identify those exhibits?

A They're the same kind.

Q You have seen those before?

A I have seen those kind before.

Q What are they?

A Packages of rubber surgical gloves.

Q Where did you go after Mr. Sellers, Peterson

and Young came out of Booth Memorial?

A We went to a hardware store to --

Q Where's the hardware store located?

A On Astoria Boulevard in Queens.

Q For what purpose did you go to the hardware store?

A Larry Peterson picked up some nails and a hacksaw blade.

Q Did he indicate why he needed those?

A He said to repair the shotgun.

Q Did you rob any banks on Wednesday January 21st?

A No.

Q Did you have occasion to see Mr. Sellers the following day?

A Yes.

Q Where did you meet with him the following day?

A At his wife's apartment.

Q Who was present there?

A Willie Young, Johnny Sellers, his wife and his niece.

Q Did there come a time when you met with Mr. Peterson on Thursday morning?

A Yes.

Q You, Mr. Young, Mr. Sellers and Mr. Peterson got

together, correct?

A Yes.

Q Where did you meet Mr. Peterson?

A In front of Mr. Peterson's house.

Q Where is that located?

A It's on Mackintosh Street in Queens.

Q What time did you meet with Mr. Peterson, Sellers and Young?

A Approximately 11:00 o'clock that morning.

Q Did you proceed then, the four of you to the United American Bank you cased the day before?

MR. POLLACK: Objection. Leading question.

THE COURT: Avoid leading if you can, this one was a dud.

Q What if anything did you do on the morning of Thursday, January 22nd?

A We cased another bank in Whitestone.

(Continued on next page)

Q What bank was that, Mr. Campbell?

A That as the First National City Bank on 154th Street in Whitestone.

(Government's Exhibit 4, 4A and 4B marked for identification.)

Q You say you cased the First National City Bank on 154th Street. Now, who cased that bank?

A Well, Willie Young actually went in to the bank and cased it.

Q Who was at the back on Thursday?

A Larry Peterson, Willie Young, Johnny Sellers and myself.

Q How did you get there?

A With that same Plymouth.

Q To your knowledge, was a surveillance team in the area at the time?

A Yes.

Q What did Mr. Young do to case the bank?

A He was given instructions by Johnny Sellers and Larry Peterson as to what to look for in the bank.

Q What did Mr. Sellers tell Mr. Young?

A To get some penny rolls out of the bank, to ask the teller for that. And while doing that to estimate the distance from the front door to the tellers cages, positions

of the cameras, whether or not there was a guard in the bank or not.

Q Did Mr. Young in fact enter that First National City Bank?

A Yes. He did.

Q I show you Government's Exhibit 4, 4A and B and ask you if you can identify that. That is depicted in those photographs?

A Yes. That is the bank.

Q That is the bank that was cased on the afternoon of Thursday, January 22?

A Yes.

Q Did there come a time that Mr. Young returned to the car, you and Mr. Sellers and Mr. Peterson were seated in?

A Yes.

Q What did he say, if anything?

A He said that he could do the bank himself. He said that it was sweet, he said the partitions were regular height, the distance was about the same as he just said this was a long hall.

Q Did he tell you anything about placement of cameras?

A He said there was one camera positioned over the door.

Q Did he indicate whether or not there was a guard in the bank?

A Yes. No guard.

Q Did you have any conversation with Mr. Sellers that evening with regard to the First National City Bank on 154th Street?

A Yes.

Q What if anything did Mr. Sellers say?

A We had a conversation in the car regarding the fact that how if everybody would be positioned in the bank, if we could get Clarence Stallworth to come along.

Q At this time Mr. Stallworth had not been present, was he?

A No.

MR. MURPHY: Objection, and ask to have the specific words used.

THE COURT: As nearly as you can remember, could you tell the jury how Clarence Stallworth's name was brought into the discussion?

THE WITNESS: Said for two people to vault the counter which was understood to be Larry Peterson and myself, in so doing, we need two people on the floor of the bank to cover the customers as well as the tellers in the bank and the door. So, we needed somebody else

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to drive, there was only four of us there at the time to take the bank and Clarence Stallworth's name was mentioned through our conversation.

Q Who mentioned Stallworth?

A Johnny Sellers.

Q Had you ever met Mr. Stallworth prior to that?

A Stallworth?

Q Had you met Clarence Stallworth prior to Sellers mentioning him?

A No.

Q Did Mr. Sellers indicate what role he was going to play?

A Just himself and Bill would have the floor.

Q Was there any discussion as to weapons, Mr. Campbell?

A No.

Q Do you [illegible] any weapons?

A I had seen one sawed off shotgun.

Q Where had you seen that?

A [illegible]'s house.

Q When?

A That would be on the morning of the 20th, or the afternoon, I am not sure, but it was the 20th.

Q Did you finish [illegible] yourselves, yet

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were going to rob the bank, cased on the afternoon of the 22nd?

A We definitely were going to rob that bank.

Q When were you supposed to do that bank robbery?

A Before lunch time.

Q On what date?

A On that following day, the 23rd Friday.

Q Did you have occasion to see Mr. Sellers alone Friday morning, then January 23rd?

A Yes, I did.

Q Where did you see him?

A At his wife's house, his wife's apartment.

Q Who else was present?

A Willie Young, his wife, Joanne, his niece, Amanda.

Q Did there come a time you left Mr. Sellers house?

A Yes.

Q Where did you go?

A We went to the area in which Clarence Stallworth lived in, Johnny Sellers got the car and got Stallworth.

Q Approximately what time was this again?

A 10:30.

Q Where did you go from there?

A We went to Larry Patterson's house.

Q To pick up Mr. Peterson?

A Yes.

Q How many people then were in the car?

A There was five of us, altogether, with myself.

Q Your car you were driving all week?

A Yes.

Q Who was present in the car?

A Clarence Stallworth, Willie Young, Johnny Sellers, Larry Peterson and myself.

Q And would you tell the jury where were you in what position in the car?

A When we drove away from Larry Peterson's house Clarence Stallworth was driving, I was sitting in the passenger side next to Clarence Stallworth. Johnny Sellers, Larry Peterson and Willie Young were in the bank.

Q Had anything been taken from Mr. Peterson's house besides Mr. Peterson?

A Everything we had obtained, the day before, plus some bandaids and a sawed off shotgun.

Q You are referring to the ski masks and surgical gloves?

A Yes.

Q All that was taken with you when you left Mr. Peterson's house?

A Yes.

With some newspapers.

Q Anything else?

A The only other thing we had in the car that was going to be used in the robbery was a 38, that Clarence Stallworth had obtained while we were waiting in front of Larry's house for him to come out.

Q Where did he get it?

A Rode around to somebody's house, I don't know whose house it was. He got it out of, he said it was his.

Q That is while you were waiting for Mr. Peterson?

A Yes.

Q There came a time you left Mr. Peterson's house with all this equipment?

A Yes.

Q Where did you go?

A First National City Bank, 154th Street and Whitestone.

Q First National City, the picture you previously identified?

A That is right.

Q Did you have a conversation in the car on the way to that bank?

A I believe we went over again where everyone's posi-

tion would be in the bank.

Q Did anything occur in the car on the way?

A Well, right before we got underway, I explained to Clarence Stallworth what had been told to me about the bank.

Q Who told you something about the bank?

A Larry Peterson.

Q What did Mr. Peterson say?

A He said that there was supposed to be a payroll there from a factory that was in back of the shopping area. That that payroll would be there that morning and the reason we were doing it at the time we were, wewere going to get there before lunch time when these people came to cash their checks.

Q What if anything did you do while you were in the car, between Peterson's house and the First National Bank on 154th Street?

A We stuffed a newspaper -- it came from Larry Peterson's house -- between the seats and on the floor, all over the car.

Q In the car?

A Yes.

Q For what purpose?

A To burn the car after the robbery.

Q Was anything else done in preparation on the way?

A Put bandaids on our fingers and put the surgical

gloves on. I put my ski cap on.

(Government's Exhibit 5, 5A, 5B and 5C marked for identification.)

Q I ask you to look at Government's Exhibit 5, 5A through 5C, and see if you can identify any of those exhibits?

A This is the one Johnny was wearing.

Q When was he wearing that, sir?

A While we were in the car.

Q On the morning of January 23, 1976?

A Right.

Q Onroute to the 154th Street --

MR. POLLACK: Can we have that identified by a number?

MR. CORCORAN: Exhibit 5.

MR. POLLACK: For identification?

MR. CORCORAN: For identification.

Q Did there come a time when you reached the vicinity of 154th Street, Mr. Campbell?

A Yes.

Q What occurred when you got to that area?

A We, approaching 154th Street, we went by the bank first the shopping area to see if everything was similar to the way it was the day before, and we proceeded around the block and into the shopping area, in the parking lot.

Q Now, what vehicle were you using at that time, Mr. Campbell?

A Same one.

MR. POLLACK: Can I ask for a sidebar at this time?

(Whereupon a side bar conference was held outside the hearing of the jury.)

MR. POLLACK: These exhibits are being shown to the witness with handwriting notations on them, "Stocking worn by Johnny Sellers. Skimask taken from the passenger side, taken from Rodney Campbell." This witness isn't testifying from memory, only what is included in the exhibits for its own bookkeeping.

THE COURT: Whose writing is that; do we know?

MR. CORCORAN: Here is identification marks, he has identified all of them, he identified these three as being taken,--

THE COURT: He picked this one out and said this is the one that --

MR. CORCORAN; These are shown to him earlier, the ones he didn't identify were --

MR. POLLACK: These are not, as latent.

THE COURT: These are the ski masks from Modell's, is what he first talked about.

MR. CORCORAN: He said that these are similar to

the ones taken from the Modell's. He said that these are the ones by Sellers.

MR. POLLACK: How can we have this with this type of notation on it?

THE COURT: Damage has been done now.

MR. POLLACK: I ask it not be done in the future. If it's to be used.

MR. CORCORAN: I can't remove the identification marks. It would be difficult to remove the identification marks and ask the F.B.I. to identify it later.

THE COURT: All thoroughly explicit anyway. In the interest of the point you have, if you want to that, you want to keep these the way they are for the purpose of persuading the jury the only reason he picked this one out because it's one Johnny wore because it said so on it.

MR. CORCORAN: It goes to admissibility.

(Whereupon trial resumed in open court.)

Q You said you approached the 154th Street shopping area in that vicinity, isn't that correct?

A Correct.

Q That is the location of the First National City Bank that you identified earlier?

A Yes.

Q Who was present in the car at that time?

A Willie Young, Clarence Stallworth, Larry Peterson Johnny Sellers and myself.

Q Will you tell the jury what happened as you approach that bend?

A We approached the bend on 134th Street and we went by the shopping area to see if it looked same as it did the day before, and we circled the block and approached -- went into the parking lot.

Q This time you're wearing a bandaid and surgical gloves described earlier?

A Yes.

Q And wearing the ski caps?

A On our heads, yes.

Q What occurred when you got into the parking lot?

A Clarence Stallworth parked alongside -- there was a Long Island Savings Bank there, there was a savings bank along that side, he parked the car there and Johnny Sellers got out of the car.

Q What occurred after Mr. Sellers got out of the car?

A He walked along the sidewalk in the shopping area to -- I guess looked in the windows and to look into the bank, to look into the store windows alongside of the bank and into the bank itself to see if the same situation was involved.

MR. CORCORAN: Perhaps before we show the jury, we should identify the diagram.

THE CLERK: Marked for identification, Government's Exhibit 6.

Q Mr. Campbell, will you examine the exhibit that is marked Government's Exhibit 6 for identification, and tell the Court and jury whether or not that is a fair and accurate depiction of the area as it appeared on the morning of January 23rd, 1976?

A Yes, it is.

Q Would you describe it, what the diagram indicates, sir?

A This is the street we came down, went down this street here and from this street we were able to see all the doors including the bank.

Q Is that a parking area located in front of the store?

A It's a driving area in front of the bank and this is a parking, this is parking came down here.

We approached the area of the shopping center coming from here, travelling down the side so that we could see the stores here, the whole area and the bank itself which is right here, the bank we intended to rob.

After passing by the bank we went over around this block

right here, a bunch of private homes, went around the block and came back up here to 9th Avenue, went into the parking lot here.

Q What occurred when you got into the parking lot?

A We parked right here somewhere along side of this bank.

Q At this point Mr. Sellers got out of the bank, is thatright?

MR. POLLACK: Objection, leading question, Your Honor.

THE COURT: He already testified to that, but plus do not lead at this point.

Q What occurred after Mr. Sellers examined the car?

A After he got out of the car, there is a sidewalk here next to the stores and bank, he came out to the car and walked along side this area here, looking in the stores, and inside the bank to see thesituation was right.

Q Where were you at the time Mr. Campbell --

A I was in the car.

Q Who else was in the car at that time?

A Clarence Stallworth, Mr. Young.

Q What if anything did Mr. Stallworth, Mr. Young and Mr. Peterson do at that point?

A After we saw him walk we came out, slowly drove

out of the lot back onto 154th Street, so that we could see Sellers walking along, went back into the shopping center here on this side, came around and stopped in front of theFirst National City Bank.

Q Who was driving the car at that time, you pulled up to the First National City Bank?

A Clarence Stallworth.

Q What occurred when you got in front of the bank?

A Waited for a signal from Johnny Sellers, who was standing right about in front of the liquor store, off to the side there's a telephone booth there, there are outdoor telephone booths on the sidewalk and we waited for a signal from him.

We stopped right there in front of the bank.

Q What happened then?

A He gave us a sort of signal and we started getting out of the car to rob the bank.

Q What occurred when you got out of the car?

A We were arrested.

Q Did you actually get out of the car when you were arrested?

A No, we had the doors open.

Q Who arrested you?

A The agents, detectives.

MR. CORCORAN: I move in evidence, Government Exhibit #1, 1A, 1B and 4, 4A, and 4B.

MR. POLLACK: No objection, Your Honor.

MR. MURPHY: No objection, Your Honor.

MR. CORCORAN: I have no further questions of this witness at this time.

(Government's Exhibit #1, 1A, 1B, 4A, and 4B marked for identification.)

THE COURT: We'll recess until -- when?

MR. POLLACK: Are we going to listen to those tapes?

THE COURT: 2:30.

MR. POLLACK: We also have sixty pages of 3500 material, we'll try to do both.

MR. CORCORAN: I didn't deliberately withhold the 3500 material, it had not been requested.

MR. MURPHY: I dispute that.

THE COURT: Never mind, it's water over the dam now.

MR. CORCORAN: You did receive transcripts?

MR. MURPHY: I asked for 3500 material and I was refused.

THE COURT: I do not decide such disputes if two lawyers disagree on something, it's between them, it's

Q Parked inside the lot, where?

A In front of the First National City Bank.

Q Now, what did you understand that Mr. Sellers was doing as he walked along the front of these stores from north to south?

A He was casing the area.

Q What do you mean by casing the area?

A He was looking for police and the bank itself for an unexpected guard, or too much traffic in the bank or whatever.

Q So, all this time as he was walking along in front of the stores as far as you were concerned, had people made a decision to rob this bank or not rob this bank that day?

A We decided we were going to rob it the day before.

Q Well, when Mr. Sellers was walking down in front of the stores what was his function?

A To case the area.

Q And he was going to check to see whether the bank was open, for instance, correct?

A No. I wouldn't say to see if it was open, he wasn't going to go into the bank.

Q If you walked down in front of the bank and

found all curtains were drawn on the bank and the door was locked, was he supposed to go ahead and try and rob the bank with you people or not?

A I don't think so.

I don't know -- it didn't happen that way.

Q I want to know what his function was while he was casing the area.

A To see if the area was similar to the day before.

Q He was sort of a scout for the rest of the people. correct?

A Yes.

Q He started at the Long Island Savings Bank, correct; this he started right here at this north corner of the Long Island Savings Bank, started walking south, correct?

A Correct.

Q He looked into the Long Island Savings Bank?

A I didn't see him.

Q Do you know if he looked into the other stores along here?

A I believe he did.

Q Do you know he did?

A No.

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Q When did you next see Mr. Sellers after you let him out of your car at the Long Island Savings Bank?

A As we came out of the parking lot and was going south on 154th Street we observed him walking along the store fronts.

Q Did you see him look into Kauff Liquor, here (pointing on Government Exhibit 6). Did you see him look into Kauff Liquor Store?

A I didn't see him looking in there, I saw him looking over the whole parking lot.

Q And then as you, in the park car for the second time in the parking lot, what did you see Mr. Sellers do?

A The second time parked in the parking lot is that what you said?

Q Yes. The first time he walked by the Long Island Savings Bank, the next time at the First National City Bank, who was driving?

A Clarence Stallworth.

Q Did he turn the engine off in the car?

A No.

Q The car was still running?

A Yes.

Q What time was that, roughly?

A 11 o'clock.

Q You people were still in the car, right?

A Yes, sir.

Q Mr. Sellers is inside the car, right?

A Yes.

Q Did you see Mr. Sellers turn and look at you?

A Yes, sir.

Q Did you see him turn and start back towards the car?

A No, sir.

Q You saw him turn and look at you, is that right?

A Yes, sir.

Q Then what happened?

A I began to exit the car, I said, "Let's go."

Q You said let's go?

A Yes.

Q And then what happened?

A I said let's go for the purpose of alerting the surveillance team that we were about to exit the car.

Q Let's go then was sort of a code word you gave to the FBI, is that right?

A That is right.

Q Now, that was to tell them what?

A That we were about to exit the car.

they had to fire a shot inside, some policemen, nearby squad car rolled up and we had to fire out way out of there having the attention of the police -- in other words, a man from behind, one of them cohiers and that is when Ihad to shoot him to get him off my Mother Fucking back, he was lying on his back, did you say that on the 20th of January, 1976?

MR. CORCORAN: The witness has already admitted making that statement.

THE COURT: He already said yes, as I understand it, you said that you recognized that as having been said in your voice on the tape?

THE WITNESS: That is right.

THE COURT: Nobody was faking your voice, that was your voice that you heard on the tape?

THE WITNESS: Yes, sir.

Q Is it not a fact Mr. Campbell on January 20, 1976, the only person in that automobile who knew those words were being recorded for posterity was you?

A Yes.

Q You made statements in there knowing that they would be recorded and transmitted to agents of the F.B.I. Is that not correct?

A That is true.

Q Mr. Campbell, is it not a fact that the 3&I nack

in question were stolen by you?

A Yes.

Q They weren't purchasedby you?

A No.

Q You and nobody else stole them, correct?

A Everybody.

MR. POLLACK: I ask the witness answer the question, Your Honor.

THE COURT: Did you take them from the store?

THE WITNESS: I came out of the store with them, yes.

Q Isn't it not a fact when you went to the hardware store with Mr. Paterson to buy the hacksaw blade and nails you purchasedthose two items?

A I paid for them.

Q With your money?

A He picked them out and I paid for them.

Q Between December and January 21st,or 2 were you gainfully employed?

A No.

Q Did you have any income at all?

A Nothing other than what I was getting from my parents and friends.

Q Where were you living at the time?

THE COURT: For identification.

Q Have you seen that transcript before, sir?

A Yes, sir.

Q Have you read through that transcript?

A Many times.

Q And you read that transcript in conjunction with the number of tapes?

A Yes, sir.

Q Those tapes transcribed accurately fairly reflect conversation you had with Mr. Sellers and Brother Coles and Wayne on the 20th?

A Fairly, yes.

Q Also reflect a conversation you had with Mr. Sellers, Mr. Peterson, Mr. Young on Tuesday the 21st?

A Yes.

Q On Wednesday, the 21st?

A Wednesday --

Q And also accurately and fairly reflect the conversation you had with Peterson, Sellers and Young on Thursday, the 22nd and Friday, the 23rd?

MR. POLLACK: I object for the use of this document for this purpose. I think it's an improper purpose.

THE COURT: The man was there, he has heard the

tapes, he has read the transcript. He says they seem fair enough to him. So much the jury may hear.

MR. CORCORAN: I would like to notice the stipulation that these are the tapes that were in fact made in the Government's vehicle on the 22nd, 21st and 23rd. Those transcripts made from those tapes.

MR. POLLACK: No objection.

THE COURT: In other words, you'll later be using a transcript which I imagine would be a counterpart of document Exhibit 10 for identification.

What the parties have stipulated in essence is that a transcript prepared from tapes which were taken by the mechanism in the automobile on the dates in question which are the 20th, the 21st, 22nd and 23rd of January.

MR. POLLACK: Correct, your Honor.

MR. MURPHY: Your Honor, on behalf of the defendant Stallworth I would object to the tapes of the 21st and 22nd for reasons I stated at the side bar before.

THE COURT: If we get to this point you will realize the point of the objection here is now Mr. Stallworth's voice is not said to be heard on these

tapes until the 23rd. Reference to him does not appear earlier than the preceding day, the 22nd. It's not claimed that Mr. Stallworth was present at the time of the tape references to him on the 22nd of January. So that the earlier tapes do not, unless you include insome way Mr. Stallworth has been connected with them, brought home to him.

MR. CORCORAN: At this time I move that these tapes be marked 11, 11-A through H.

THE COURT: 11 to 11-H?

MR. CORCORAN: Government's Exhibit B on the tape recorder instead of one of these cartons.

I move these tapes in evidence, your Honor.

THE COURT: Are these the ones taken from the instrument in the vehicle?

MR. CORCORAN: They would include --

THE COURT: Includes them but is not limited to them.

MR. POLLACK: I ask he be limited to them for reasons stated before.

MR. CORCORAN: These are copies of the originals, the originals being on a cassette we have present. I would like to move the originals marked.

THE COURT: In otherwords, the tapes that are

every conversation you had was being monitored; correct?

A Yes.

Q Now, sir, directing your attention to the conversation concerning the United American Bank, I believe you looked at that on the afternoon of the 21st?

A Yes, sir.

Q And at that time there is a connotation inthe transcript, page 23 at that time, sir, is it not a fact that you exited the car to lookover the bank?

A Yes, sir.

Q And when you re-entered the bank there was great excitement about the ease in which you thought the bank could be taken?

A We all did.

Q And you were part of it, right?

A I participated.

Q There was excitement, right?

A Yes, sir.

Q It looked like an easy mark?

A It looked like it was robbable.

(continued next page)

is -- well, he was in the car with three other men. They eventually had in mind, four of them and three of them had in mind the robbery of the bank and he understood that that is what he was going to do. He would be quite surprised to find that, who one of them was or had been convicted of.

MR. MURPHY: My argument, and I don't know the Latin for it, is it seems to me unfair fundamentally for the Government to say I am going to trap somebody and then when they trap them you show you were trapped and the Government says yes, but you are fair game because you are a crook, anyway.

THE COURT: You are just criticizing the whole doctrine and you can find lots of people who join you in criticizing the whole doctrine.

MR. MURPHY: The law is a matter of drawn lines. I would say you can draw the line as to the tape but to let this kind of conviction in of a federal bankrobbery is too much and that is why I object.

THE COURT: I don't know how they would make out in the state court on the People and Mullineaux but I am referring to you in this court to the matter that it is admissible as a similar fact. Unfortunately, it is in keeping with the other evidence in the case.

If we accept the testimony of Rodney Campbell and the verity of the tapes it is there. It isn't like Bruton or anything like that short, because if you get into a criminal joint venture you have to stand trial and you are hanged by their records, in part.

MR. MURPHY: Again, the theory is conspiracy and that is not the charge.

THE COURT: Well, it is a charge, a joint crime, and if you can differentiate it successfully with conspiracy I will eat my hat.

MR. MURPHY: My argument is it cannot be distinguished.

THE COURT: Mine, too. But unfortunately neither of us can cite a case for that proposition and the books are full of cases that hold the opposite. Maybe you can get it changed. I hope you don't have to resort to that. I am not suggesting that.

Is this 1972 in this court?

MR. CORCORAN: Yes.

THE COURT: Does it identify itself with 2113A?

MR. CORCORAN: Yes.

THE COURT: This is not one that Sellers was interrogated about at all -- I am sorry, Campbell has been interrogated at all?

Rodney was trying to set them up, or something.

Q Did there come a time you left Mr. Peters house?

A Yes, we did.

Q And where did you go?

A From there we went to the Whitestone Bank.

Q And that's the First National City Bank?

A First National City Bank.

Q 15th Street?

A Right.

Q Who went out there on Thursday?

A Johnny Sellers, Larry Peterson and Rodney Campbell and myself.

Q And how did you get out there, Mr. Young?

A In Rodney Campbell's car.

Q And what occurred when you got out to the area of the bank?

A We parked about, I guess about a half a block from the bank and I got out and walked back out to the bank and walked inside.

Q Did you have any conversation before you got out of the car?

A Yes. Peterson told me to go inside and check out the layout of the bank, where the tellers were

picious of riding with Campbell. He had mistrusted him and we got into a little conversation about that and that was that.

Q Did you discuss roles in the bank?

A Not extensive, just that Campbell and Peterson would be going over to the tellers and I would take out the camera.

Q You said take out the camera. What do you mean?

A We hadn't really decided. It was supposed to be decided the next morning how it was going to be done; but that would be my job.

Q Did you have occasion then on Friday morn January 23rd, to meet with Mr. Sellers and Mr. Peters and Mr. Campbell?

A Yes, I did.

Q About what time?

A Campbell came and picked Sellers and myself up at about 10:00 o'clock on that morning. We then drov from there to 99th Street and Sellers picked up Clare Stallworth. We then drove back to Larry Peterson's house.

Q Just a moment, Mr. Young.

A Excuse me?

Q Now, were you armed when you met those gentlemen on Friday morning?

A No.

Q Did there come a time you became armed?

A Yes.

Q When was that?

A Right after we left Mr. Peterson's house.

Q And what happened then?

A I was given a pistol.

Q What kind of pistol?

A A .38.

Q Who gave it to you?

A Mr. Stallworth.

THE COURT: Who was that?

THE WITNESS: Stallworth.

Q Where were you seated when Mr. Stallworth handed you a pistol?

A In the back seat, right behind the driver.

Q Where was he?

A Excuse me?

Q Where was Mr. Stallworth?

A He was driving.

Q Did he hand it back to you?

A Yes.

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MR. MURPHY: Excuse me, I didn't hear the last exchange.

THE COURT: Did he hand it back to you.

MR. MURPHY: I missed the question and one before that.

THE COURT: Could you read that, please Mr. Reporter.

(The Court Reporter reads the requested portions.)

Q Were you moving at the time he handed you the pistol or stationed there?

A We had started to move off.

Q Where did you go from there?

A From there we went to a gas station, approximately 112th Street and Ascot Boulevard.

Q For what purpose?

A To pick up some gasoline.

Q For the car?

A Right.

Q For the tank of the car?

A No. We were going to use it to set the car on fire after we had left the bank.

Q Did there come a time you left the gas

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A That was the time we got arrested.

Q Do you remember how exactly it happened or all you remember, you were sitting there and then suddenly you got arrested? Did you remember anything else about it?

A Aside from the fact that we were sitting in the car, we looked over at the liquor store where Johnny Sellers was sitting, and at that time was when the FBI agents and the police officers came out. From there -- they seemed to be coming from everywhere.

Q You just looked over at Mr. Sellers and then the police came from everywhere. Is that right?

A Correct.

Q Now, when you were arrested were you armed?

A Yes, I was.

Q What were you carrying?

A A .38.

Q A .38 revolver. Is that right?

A Right.

Q Now, where did you get that revolver?

A I got it from Clarence Stallworth.

Q You got it from Clarence Stallworth.

Did you know him as Clarence?

A No.

Q And when was the next step to be taken, sir?

A We were supposed to get out.

Q Where were you in the car?

A In the back seat.

Q In the middle?

A On the driver's side, beside the door.

Q Who was to your right?

A Peterson.

Q And who was to his right?

A No one.

Q And who was in the front seat on the passenger's side?

A Campbell.

Q Now, did Peterson say let's go?

A I don't remember.

Q Did Stallworth say let's go?

A No, I don't think it was him.

Q Were the words let's go, were they the words that were supposed to trigger you to leave the car?

A There was no key words to leave the car.

Q Were those the last words spoken as you were going to exit the car?

A I think so.

Q Did anybody actually get out of the car?

A Not to my knowledge.

Q You were all still in the car?

A Yes.

Q Excluding Mr. Sellers. Is that right?

A Right.

Q You were all still in the car and that's when you were arrested. Is that correct?

A Right.

Q At that time where was the .38 that you say you had?

A In my pocket.

Q Was it drawn?

A No.

Q Was it ever taken out of your pocket at any time during this entire period?

A No.

Q How long were you in position in front of the bank before the words "Let's go," were spoken?

A I don't remember, ten or fifteen seconds.

Q And where was Mr. Sellers?

A Standing in front of the liquor store.

Q This is Government's Exhibit 6, Mr. Young

Q Did he have a gun on his person?

A Yes.

Q Was that gun ever drawn during the entire time of the incident of this morning?

A Not to my knowledge.

Q Was it ever visible?

A I didn't see it.

Q It was under two coats, wasn't it?

A Right.

Q And on this occasion now Mr. Sellers was here and the car was parked in this area?

A Right.

Q And you were going to get out, correct, and join Mr. Sellers?

A Right.

Q Had Mr. Sellers given you a signal to exi the car?

A No.

Q Was there any signal given indicating to you you should leave or stay in the car?

A No.

Q Were the last words spoken in the car immediately prior to the arrest that of, "Let's go"?

A As far as I can remember, I think so.

Q And in what capacity are you presently employed by the FBI?

A Currently assigned to the supervisory staff of Washington, D.C. headquarters.

Q And where were you assigned in January of this year?

A At that time I was assigned as a bank robbery supervisor of the New York office.

Q Calling your attention to approximately 11:00 o'clock on January 23, 1976, where were you at that time, sir?

A At that time I was located in a residence directly across the street from the First National City Bank on 154th Street.

Q Would that be -- withdrawn.

Calling your attention to Government Exhibit 6, the diagram on the blackboard to your left, would that be the First National City Bank you're referring to, 154th Street in Whitestone, Queens?

A That's correct, sir.

Q Would you indicate on that diagram, sir, where you were located approximately 11:00 o'clock in the morning?

A Yes, sir.

There are several residences, private dwellings, across the street from the bank. I was located in a residence directly across the street on the second floor, a clear view of the entire area.

Q Would you step back up.

And what was your assignment at that time? What were you doing?

A We had made arrangements where we had surveillance teams which were surveilling a vehicle containing the defendants. We surveilled them into this area. My function was to alert the surveillance teams which were already set up in this area, to respond to an arrest situation.

Q Were you, in fact, in charge of this operation at that time?

A Yes, I was.

Q Did you have any equipment in that private home with you on the morning of the 23rd?

A Yes. In the residence I had two radios with me; one radio which had the capacity of monitoring the vehicle in which the defendants were riding in at the time, and the second radio which had the ability to monitor and transmit to the surveillance units in the area.

this point here and began walking on the sidewalk. You have to imagine a sidewalk here, okay, down past the bank.

He started down in this direction and the vehicle exited the lot and the same man entered an headed down south on 154th Street to 8th Avenue, got to 8th Avenue and the vehicle made a right-hand turn.

Mr. Sellers meanwhile walked past the First National City Bank and as he passed the bank he looked into the bank.

Q Did you have any agents in the bank at that time?

A Yes, we did. We had two agents in the rear portion of the bank and I should have mentioned those people before.

Q And was the bank open at that time?

A Yes, it was.

Q Would you explain the front of the bank, please.

A The front of the bank is three-quarters glass and then a steel partition on the bottom. There are two doors, two sets of doors as you enter the bank. You are walking into a vestibule.

Q So there would be an outer door on the

street and a vestibule, and then an inner door to the bank. Is that right?

A That's correct, sir.

Q Continue. What happened after Mr. Sellers walked past the bank?

A Mr. Sellers walked past the bank and walked down to Waldbaum's where there was a telephone, picked up the telephone, stayed there a few seconds and then hung up and then walked past the bank a second time and looked into the bank again; walked past the bank, turned around.

Now, he was walking south on the sidewalk. And he walked past the bank a third time and looked in again.

Q Where was the car at this time, Mr. Murphy, containing Mr. Stallworth and Mr. Peterson and Mr. Young?

A The car at this time was not in my view. The car after Mr. Sellers had passed the bank the third time, the car then came into my view coming off 9th Avenue onto 154th Street.

Now Mr. Sellers passed the First National City Bank and stopped just beyond the doorway entrance to the liquor store and looked into the liquor store.

he spent a few seconds looking into that store and maintained that position.

He then, while standing in that position, the car [illegible] 15th Street toward 8th Avenue again, made a [illegible] turn into the parking lot area.

Q Were there any other individuals on the street at that time?

A Yes, sir, there were some pedestrians on the street.

As a matter of fact, as Mr. Sellers was looking into the liquor store the vehicle containing the other four defendants came into the [illegible], came into the parking lot. A civilian passed Mr. Sellers and walked into the bank.

Q [illegible]

Q At this time was the bank open, Mr. Murphy?

A No, sir, it was not. I omitted this a few moments ago.

After Mr. Sellers passed the bank the second time, I instructed the agents in the bank to lock the inner doors.

Now, the purpose of doing this was to make sure --

MR. POLLACK: It really doesn't matter, as long as they got it locked.

Q Was there -- withdrawn.

THE COURT: Do you know whether or not -- you couldn't tell from where you were whether they had carried out your order?

THE WITNESS: I received a transmission from the bank that they closed the doors.

Q What happened after the pedestrian passed Mr. Sellers?

A The pedestrian passed Mr. Sellers and entered the first set of doors. The second set of doors were closed.

Now, this happened at the same time or just a few seconds after this individual entered the bank, a car with the other subject, the other defendants, pulled up in front of the bank. They looked back towards Mr. Sellers. Mr. Sellers looked at them and at that moment Mr. Sellers started to walk towards the bank.

Q And what, if anything, did you do at that time?

A As he walked towards the bank the car doors began to open and at that time we instructed the agents to make the arrest.

Q Was it that pursuant to your plans that day?

A Yes, sir, it was.

Q Was there any intention on the part of the Bureau to allow those individuals to enter the First National City Bank?

A Absolutely not, sir.

MR. CORCORAN: Thank you.

I have no further questions at this time.

MR. MURPHY: No questions, your Honor.

CROSS-EXAMINATION BY

MR. POLIACK:

Q Mr. Murphy, which door opened?

THE COURT: Which door.

MR. POLIACK: No, which car door.

Q Which car door opened?

A The door on the right side of the car, both doors.

Q Front and back?

A Yes, sir.

Q Fully opened?

A The door in the process of opening as Mr. Sellers was moving toward the back. I didn't wait to see if they opened all the way. I instructed the agents to respond at that time.

Q Did anybody get out of the car?

A No, sir.

Q Which door opened first?

A I can't really say, sir.

Q How long after you saw the first movement in the door did the agents arrive at the scene?

A Within seconds.

Q Who was the first team of agents to arrive? Where were they located?

A The first team of agents were the men in the liquor store.

Now, Mr. Sellers was moving towards the bank. He walked directly into the men coming out of the liquor store.

Q Now, sir, you observed Mr. Sellers, didn't you?

A Yes, sir.

Q What was he wearing?

A If I remember correctly, a three-quarter length plaid coat, I believe, and a green knit hat, I think it would have been.

Q Could you see a gun from where you were stationed?

A No.

Q Was a gun drawn by Mr. Sellers at any time?

A No, sir. He didn't have the opportunity.

Q Did you ever see the gun?

A Yes, sir, I did.

Q Did you ever see it on that date from your location

A No, sir.

Q Was a gun drawn by anybody in the car?

A Not that I could see.

Q Who had the gun in the car?

A I do not know, sir.

Q To this day you don't know?

A No, sir.

Q Did Mr. Young get out of the car?

A They all got out of the car once they were place under arrest, sir. No one had the opportunity to get out of the car prior to being placed under arrest.

Q Did Mr. Young's door open?

A I am not sure what position Mr. Young was sittin in, sir.

Q Now, sir, how far is it from the private homes to the automobile?

A I would estimate the distance about 65 feet.

Q Were you using binoculars?

A No.

Q Straight eyes?

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A Yes, sir.

Q Unobstructed view?

A Yes.

Q And you could see the three men or four men in the car look at Mr. Sellers or look in that direction?

A Look in the direction of Mr. Sellers.

Q Did you see any overt signal or movement of the hands, any mouth movements or any words overheard which would be Mr. Sellers telling them to move out of the car?

A Just Mr. Sellers looking in their direction. I saw Mr. Sellers' head move in the direction of the bank and towards the car and he moved towards the bank.

Q Were you overhearing what was going on in the automobile?

A Yes, sir, I was able to monitor it.

THE COURT: In which automobile?

Q The automobile the defendants were riding in?

A Yes, sir, I was able to monitor the conversations in that auto.

Q What was the last words spoken before you gave your order to move?

A Now, I have not reviewed the transcripts of the tape.

Q I am asking from your memory, sir.

A I believe there was something said to the effect, "Let's go."

Q And who said that, sir?

A I believe it would have been Mr. Campbell.

MR. POLLACK: No further questions.

REDIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Murphy, were you waiting for a signal from the car before affecting the arrest of the defendants?

A We worked out a plan where we would receive a signal from the car. However, I was not depending on that signal to give the order.

Q And what did you base your decision on?

A On the fact that Mr. Sellers moving towards the bank and we had a potentially dangerous situation with a hostage stuck between the doors.

MR. CORCORAN: I have no further question.

RECROSS EXAMINATION

BY MR. POLLACK:

Q Agent Murphy, I show you a document turned

A That's correct.

Q And what happened then?

A Shortly after, we received information from SA Murphy that the individual was heading toward the bank and we should take our actions to stop them.

Q And did you do that at that time?

A That's correct.

Q And what did you, yourself, do, sir?

A I was the first individual out the door.

Q Were there any other agents in the area when you got out in front of the liquor store?

A Not in the vicinity. I was the very first one out on the sidewalk.

Q And where was Mr. Sellers at that time?

A He was approximately three to five feet to my left.

Q Could you indicate on the diagram to your left, Government's Exhibit 6, where you were and where Mr. Sellers was when you were given the order.

A Certainly.

(Whereupon the witness steps off the witness stand and approaches the diagram.)

A (Continued) We had proceeded to this front part of the liquor store and Mr. Sellers was -- had

been standing right about here, looking in the windo: of the liquor store when we got the word to move. The liquor store has a door located right around here. I came out this door here and Mr. Sellers was now proceeding down toward the door and we met sort of face to face.

Q And what did you do at that time?

(Whereupon the witness resu es the witness stand.)

A At that time I was equipped that day with a shotgun. I presented the shotgun to Mr. Sellers, advised him who I was and that he was under arrest, and thereafter had him place his hands on the plate glass window.

Q Did you have occasion to search Mr. Seller: at that time?

A Yes, I did.

Q And what, if anything, did you find?

A I asked hi: if he was carrying a weapon and he advised me he did have a weapon located in his right pocket; at which time we took a 12 gauge shotgun from him.

(Shotgun referred to handed to the Clerk and a conversation takes place between Mr.

(phonetic spelling) were located to see if they needed any more help.

When I ascertained that they did not, I returned back to Mr. Sellers who had been at this time handcuffed and was in the custody of other agents.

Q Did you subsequently have occasion to search the vehicle in which Mr. Sellers and Mr. Stallworth arrived on January 23, 1976?

A Yes, I did.

Q And when did that search take place?

A Shortly thereafter we took the vehicle to the New York office garage, the FBI office, and searched it at our garage.

Q I show you first Government's Exhibit 2A, 2B, 5A and 5C, and ask you if you can identify both - if you can identify those items.

(Items referred to are handed to the witness.)

A Yes. These are ski masks and hats that were found upon search of the vehicle.

Q And Government's Exhibit 3A, 3B, 3D and 3 Have you seen those items before?

(Items referred to handed to the witness

MR. CORCORAN: Would you mark this 17A

B, C, D, E, F and G?

THE CLERK: Yes.

THE WITNESS: Yes. These are what I would call latex or plastic gloves which we also found in the vehicle at the time of our search.

Q And that's the 1975 green Plymouth in which Mr. Sellers and Stallworth arrived?

A That's correct.

(Whereupon Mr. Corcoran has a further conversation with the Clerk of the Court, out of the hearing of the Court Reporter.)

THE CLERK: Marked for identification, items, as Government's Exhibit 16, then 16A through 16G -- that would be through 16F.

Q Would you examine Government's Exhibit 16, 16A through 16F for us.

(Exhibits referred to are handed to the witness.)

Q Can you identify those items, sir?

A Yes, this is a 12 gauge shotgun shell.

Q What exhibit is that? Would you note the exhibit number? It's located on the yellow pad.

A This would be 16E. This round was found in the

vehicle, the green Plymouth that we searched.

16D is a PJ holster which was also found in the vehicle.

16C is a box of barbed roofing nails which we found in the vehicle.

16B is a package of Johnson & Johnson Band-aids and some more of the surgical gloves which were found upon my search of the vehicle.

16A is more Band-aids, which were found on my search of the vehicle.

16 is a Band-aid box found during our search.

And 16F is a canvas bag which I have initialled which I found during the search of that car.

(Whereupon Mr. Corcoran and the Clerk of the Court have a further conversation out of the hearing of the Court Reporter.)

THE CLERK: Item marked for identification as Government 16G.

Q And would you examine Government's Exhibit 16G.

(Exhibit referred to handed to the witness.)

A Yes.

16G was -- I would assume it's a pyrex bottle. It was found in the car. It contained what I believed

what appeared to me to be gasoline.

MR. POLLACK: I would object to the introduction of any of these exhibits without voir diring the witness.

MR. CORCORAN: At this time, your Honor, the Government does move in evidence Government' Exhibit 2A, 2B, 3A, B, D and 3, 5A and 5Ω, 14, 15, 16 and 16A through 16G.

THE COURT: What were 14A and B?

MR. CORCORAN: 14, your Honor, was the shotgun.

THE CLERK: 14 is the shotgun. 15 the shells, and nails.

THE COURT: Step to the side and we will talk for a moment.

(The following takes place at side bar ou of the hearing of the jury.)

THE COURT: I don't think you have offered 13.

MR. CORCORAN: No, I haven't, your Hono 13 is the conviction which I will offer later.

MR. POLLACK: On the shotgun, I have n objection. It was taken off my client's perso I want to know if there were any fingerprints

Q Mr. Walker, by whom are you employed?

A The Federal Bureau of Investigation.

Q And how long have you been with the FBI?

A Approximately seven years.

Q In what capacity?

A Special agent.

Q Assigned to any particular squad?

A I am now assigned to the New Rochelle office of the FBI. I was formerly assigned to the bank robbery squad in New York City.

Q Were you so assigned on January 23rd of this year?

A Yes, sir.

Q What was your assignment on the morning of January 23rd?

A I was assigned to take up a position in the Waldbaum's Supermarket on 154th Street in Whitestone, Queens.

Q You're referring to Government Exhibit 6, the chart on the left.

Is that the store at the end of the shopping center?

A Yes, sir.

Q And anybody with you at that time?

Q And what specifically did you do then?

A I proceeded to the car which was parked or stopped in front of the bank. I moved towards the rear seat, driver's side, which was closed.

Q Would that be away from the bank?

A That would be the side away from the bank.

Q And were there other agents in the vicinity of the car at the time you arrived?

A Yes.

Q What agents were there at the time?

A There were several agents there.

Q Agent Mortensen there?

A Yes.

Q Agent Martinolich?

A Yes.

Q And what did you do when you arrived at the car, Mr Walker?

A I opened the rear door on the driver's side and at gunpoint arrested the individual who was seated in the rear seat.

Q And who was that, sir?

A He was subsequently identified as Willie Young, J.

Q Did you have occasion to search Mr. Young at that time?

the Government moves in evidence Government's Exhibit 13, a certified copy of judgment of committment order of the United States District Court for the Eastern District of New York, case of United States v. Johnny Sellers, 71CR951, dated March 17, 1972, in which Mr. Sellers is adjudged guilty of the crime of bank robbery, violation of 21,13..., Section 2 of Title 18, United States code, and in that he did on or about the 22nd day of March, 1971, wilfully and knowingly, by force, violence and intimidation, take from the person and presence of the employees of the Bankers Trust Company, Queens, New York, approximately $18,696 in United States currency, which money was in the care, custody, control, management and possession of such bank, deposits which were then and there insured by the Federal Depositors Insurance Corporation.

At this time, your Honor, the Government rests.

THE COURT: I think that will close the evidentiary part of the case for today and we will adjourn your part of the case then until

10:30 o'clock on Monday morning.

Meanwhile, please do not discuss the case with yourselves or anyone not on the jury until it is given to you for your deliberation.

[illegible]

(The jury leaves the courtroom and the following takes place out of the presence of the jury.)

MR. MURPHY: Your Honor, at this time on behalf of the defendant Clarence Stallworth, I would move to dismiss Counts 1 and 2 on the ground of failure to make out a case, a prima facie case of a violation of those statutes charged in Counts 1 and 2.

Your Honor, as to Count 1, I rest on what I had discussed with you before at the bench before the trial began.

As to Count 2 --

THE COURT: As to Count 1?

MR. MURPHY: As to Count 1, the attempted bank robbery, we had discussed that [illegible] before the trial began.

THE COURT: Yes. But what do you say

now in light of the evidence after the trial?

MR. MURPHY: If I may, your Honor, may we begin with Count 2?

THE COURT: Yes, certainly.

MR. MURPHY: I refer the Court to the indictment charged, knowingly, wilfully and feloniously, by force, violence and intimidation, attempts to take from the person and presence of the Employees of the First National City Bank, a quantity of money, and in the commission of this act and offense the defendant Clarence Stallworth did assault and place in jeopardy the lives of other persons present by the use of dangerous weapons.

The charge is then an assault, in so many words, on other persons by the use of dangerous weapons.

First of all, Clarence Stallworth, on the Government's evidence, was carrying no weapon; all right.

Then, if he is to be held liable, it must be on some sort of aiding and abetting as to the acts taken either by Johnny Sellers --

THE COURT: Just a moment, please. Let me look at my notes.

Do you agree that there was no evidence that Mr. Stallworth was carrying a weapon, Mr. Corcoran?

MR. CORCORAN: No, sir. There is evidence in the record that Mr. Stallworth had on his person in the car being surveilled by the agent that he had in his possession a .38 caliber revolver which he presented to Willie Young before the time of the arrival at the bank. He had no weapon in his possession at the time of the arrest, I will agree to that.

MR. MURPHY: The evidence taken most favorably to the Government, your Honor, is that Mr. Stallworth gave the gun either to Mr. Campbell to -- or to Mr. Young, depending which of those witnesses are given credence, at the time either before they arrived to Mr. Peterson's house to pick up Mr. Peterson; or if Mr. Young is to be believed, as they left Mr. Peterson's house when Mr. Peterson was in the car together with Mr. Stallworth.

From that point on, Mr.

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Stallworth had no weapon; all right.

Now, the question is whether they did, Mr. Stallworth and others, did assault and place in jeopardy the lives of other persons present by the use of dangerous weapons.

The weapons remained on the person of Willie Young and Johnny Sellers. Mr. Young remained in the car, never drew his weapon or left the car, never made any statement or actions of threats.

There is no testimony of him doing anything but sitting in the car armed with a weapon, period.

All right.

Now, Johnny Sellers, even if you take Agent Murphy's statement on the stand, Johnny Sellers walked back and forth in front of the bank and liquor store and turned and walked toward the bank at the time the arrest signal was given.

Johnny Sellers never showed any weapon whatsoever, the shotgun in evidence. The agent never knew, the agent who

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arrested Johnny Sellers who was Agent Mortensen, never know that Johnny Sellers had any weapon on him until he asked Mr. Sellers if he had a weapon on him and Mr. Sellers said, yes, and turned it over.

So not only did he not know the man was armed, or not seeing, but he didn't have any subjective knowledge that this man was armed until he asked him, and the weapon was turned over.

And then, on the evidence most favorable, most favorable to the Government, looking at it most favorable to the Government, there is no assault here on the person being arrested.

Now, the only argument you can make in order to find these people guilty of 21, 21, 3D, that Government agents who arrest people realize in the course of arresting people they might be subject to physical harm. So you then have every time a person is arrested, you have an imputed assault on Government agents from the fact that these persons arrested had the capacity to perform physical harm on the

agents.

We have no evidence from the agents on the stand that they, themselves, were in fear of their lives. That question wasn't asked from one agent.

So we are to impute from the fact that the guns, both of them were operable, that the agents should have been at that time in fear of their lives. And from that computation we then state or find that there was an assault on the agents.

That is a crime in the air and in conjecture, if there ever was a crime in the air and in conjecture, rather than a crime of fact.

Your Honor, from that speculation I would respectfully submit that no jury should be permitted to find these people guilty of an assault, the assault section of 21, 1, 3, either as charged, nor either as construed in the way most favorable to the Government on these facts.

MR. POLLACK: I simply join in that motion. I think the evidence is clear that

Sellers didn't even have the capacity to reach the gun at the time in question under the circumstances in question.

And in the other instance, the evidence is clear that Young's door never opened. If any door opened at all or began to open by the testimony of James Murphy, it was the door of Peterson and Campbell. So, therefore, no one could be in danger according to the facts put forth by the Government. The only intent of that statute is to add an additional five years of incarceration.

MR. CORCORAN: For the record, your Honor, at the outset it is my recollection of the testimony that at no time was there evidence from either Mr. Campbell or Mr. Young that the weapon was ever handed from Mr. Stallworth to Mr. Campbell. There was no such testimony.

MR. MURPHY: I will have to find it in the record.

MR. CORCORAN: All right.

With regard to the D Count, your Honor, to say at the outset the forced violation and placing in fear --

THE COURT: That's not involved.

MR. CORCORAN: Yes.

Subdivision D doesn't call for any subjective fear on the part of anybody.

THE COURT: Yes, it does. Read what it says, that part of the indictment, of Count 2, really starts on page 2 of the indictment with the words, and in the commission of this.

Have you got it handy there?

MR. CORCORAN: Yes.

In connection with the A portion of the D charge, there had to be an intention on the part of the participation to use the weapons, weapons that would place persons in fear.

But subdivision D reads that whoever in committing, or attempting to commit, that is attempting to put persons in fear, either assaults or places in jeppardy the lives of persons.

Now, the Government is not alleging here that the defendants assaulted

anyone in that sense of the word. That is, the weapon was not drawn. We don't allege it was drawn and pointed at anyone. But we allege it was an assault in the legal sense where, in fact, it was the placing into jeopardy the lives of persons in the attempted bank robbery. In arming themselves with weapons in order to further their plan of robbery of that bank, they made themselves capable of inflicting serious injury with a deadly weapon.

Consequent in attempting to rob that bank and being armed at the time, they placed in jeopardy the lives of persons within the range of those weapons. That would include not only the agents and the FBI who had to put themselves in jeopardy to terminate their endeavor, but as we heard today through the testimony, there was an innocent pedestrian who passed by Mr. Sellers and found himself in the position of being inside that vestibule as Mr. Sellers moved toward the bank with a loaded shotgun, a shotgun loaded with a shell and nails. Certainly that individual, if not the agents, comes within the intent of congress, your Honor.

His life was placed in jeopardy as Mr. Sellers attempted to rob the bank, and the Government submits there is evidence from which the jury can find a violation of that section.

THE COURT: You don't mean -- you'll agree no one was assaulted?

MR. CORCORAN: Yes, I agree. But the section reads --

THE COURT: So the real question is whether or not anyone's life was placed in jeopardy in the attempt?

MR. CORCORAN: Yes, your Honor. It's a disjunctive provision. And the fact that agents were able to effectively arrest before guns were drawn and fired, it does not mean that lives were effectively placed in danger prior to the arrest.

THE COURT: Yes. All we have to do is get the intention clear, in other words, that each one of these men, if he was armed, was because he was -- the jury might find -- committed to a bank robbery plan and was armed, was when they got to the bank and before they actually drew the weapons already jeopardizing the lives of the

people who were there, either casually or to intercept.

Is that your contention?

MR. CORCORAN: Yes, your Honor.

And I should mention those weapons were not in any way limited, that is to say, the people inside the bank as well could have been injured had any firing begun. It wasn't only the individuals outside, but the weapons could well have pierced the bank and injured persons in the bank. But that's not my position.

MR. MURPHY: As the Court states the proposition, it is different from the way I understood the Government's proposition, but it's the more difficult proposition to answer.

As the Court answers, it is the attempt to both rob the bank and to assault and place people in danger.

THE COURT: I didn't say anything like that. The language we are dealing with is the language on page two of the indictment, starting with line two, and which cites the statute very precisely I think.

Now, in the commission of this act and offense -- now, you can strike out the words act and offense and say, in the commission of this attempt, the defendants -- there is no assault, apparently -- placed in jeopardy the lives of others by the use of dangerous weapons.

Now, what is involved in Mr. Corcoran's idea is that to have the weapons at the ready, that is, loaded and where they can reach them, and to be embarked on a plan to rob a bank and to arrive at the bank and be just starting in motion, even before the weapons are drawn, places lives in jeopardy since -- if I can put it that way -- the momentum of robbery is under way and must be stopped. And it can't be stopped either, except by police intervention or going on and succeeding. One or the other will happen.

But your argument is in either event lives are in jeopardy and they will be in jeopardy if the robbery is allowed to be committed or if it is stopped. Otherwise jeopardy does not mean holding the pistol to the head and

saying, I'll shoot, if.

But being in a position to do that and committed to a course of action which if uninterrupted results in the guns being presented, and it at least creates a risk that the FBI interruption could have ended in gun play.

Is that the idea?

MR. CORCORAN: That's our argument.

THE COURT: Have you a case?

MR. CORCORAN: There are a few cases on attempted bank robbery, your Honor.

THE COURT: There are only a handful of them. I have gone through them and they are all pretty clear cut cases, where either an assault or a placing in jeopardy did occur. I think the most spectacular one is the one where they went to the bank manager's house and disclose -- had their weapons out, disclosed the plan to him and he said, well, it won't work because there is a time lock on the vault and it won't open for two hours, so we will have to adjourn the robbery for at least two hours; and that was held to be an attempt. But I think it was charged and convicted as 21, 13 (a) attempt for some

reason or another.

As far as I can recall, the only convictions I have seen have been 21, 13A convictions in the attempt situation.

MR. CORCORAN: I have no authority that would be exactly on point.

THE COURT: What I am thinking is, suppose a man goes into a bank, he is armed and he has a gun. Maybe he has it in one of those shoulder holsters or something, and he just says to a teller, "I am armed and it's all ready to fire. I don't want to make a useless display of strength here, but if you don't turn over to me all of the cash you have in the cage, I'll shoot you."

Now, is that a placing of life in jeopardy? I guess it's an assault if the teller believes him. But isn't the teller going there with the capacity to and the will to do it enough?

MR. CORCORAN: I think cases are pointed usually with respect to the fear intimidation, fear intimidation, assault, or whether or not the drawing of a weapon is sufficient to allow

the jury to believe the weapon is operable and cause that injury, your Honor. I don't think that those cases preclude us from finding this is the clear intent of the statute. Placing in jeopardy of a life is certainly different than an assault and certainly lives are placed in jeopardy.

THE COURT: It seems pretty dubious to me.

Nobody has any authority on it, I see, one way or another.

MR. MURPHY: No, your Honor. But the lack of authority goes to the benefit of the defendants.

THE COURT: Well --

MR. MURPHY: After all, criminal law is not the place to make new law.

THE COURT: That used to be true. I think I better go up and see if I can find anything on it because I had not thought that this had gone far enough to place lives in jeopardy.

Now, I didn't think in terms of this being a -- in other words, that you have to have them on, the momentum of the situation and the menace that the risk to life has been

created and that the only way of the 21, 13 offense could go uncommitted would be if the FBI challenged the momentum of the episode, which could obviously be at the risk of their lives.

I suppose you can't necessarily argue that they made the arrest at gun point and that this is evidence that they regarded their lives as being in jeopardy. But the stop and frisk cases I suppose have that idea implicitly in them.

MR. POLLACK: If I may just offer one point, Judge, I think any time an FBI agent makes an arrest, he does so with the knowledge that his life may be in danger, any time. That's why I don't think you will see an arrest made that the gun is not drawn. That is in their policy and its --

THE COURT: Let's be a little more realistic this time. They did have excellent reason to believe that these men were armed if they could place any credence to what they were hearing over the radio and what the debriefings of Campbell were telling them about.

MR POLLACK: I am not disputing that,

[illegible]. But what I am disputing, the intent of a statute that goes to putting lives in danger during an attempt, not an aborted attempt, but [illegible] -- and any time there is an intervention of law enforcement [illegible], by the time there is an arrest [illegible], there must be [illegible] for the safety of the [illegible]. But that doesn't mean that the intent of this statute is being upheld by the way the prosecution wishes this Court to construe it.

Now, the statute is --

THE COURT: Now, look, there is perhaps a distinction. Maybe it's just statutory inadvertence [illegible].

[illegible] requires the forced violence and intimidation. But I guess it would be addressed to the tellers.

MR. POLLACK: Or officers of the bank.

THE COURT: [illegible].

MR. POLLACK: It could be applied to an officer of the bank in his home, as the Court pointed out in the example. In other words, somebody has control over the assets which the

perpetrators wished to take.

THE COURT: You see, here you say, or the section says, whoever by force or violence or by intimidation takes or attempts to take from the person or presence of another, any property or money, or any other thing of value belonging to or in the care of the bank.

Now, that isn't in B.

MR. POLLACK: Yes, it is, your Honor, because B makes A and B of the section --

THE COURT: Yes, except as it is incorporated.

MR. POLLACK: The elements of A are incorporated and those are the elements you are speaking of.

THE COURT: No, I am not. Because what we are concerned with here is whether in attempting the offense of Count 1, lives were put in jeopardy.

MR. CORCORAN: Your Honor, I think perhaps we can glean some evidence of the congressional intent in subdivision B, in which they indicate how broad their concern is. In subdivision B it makes it a crime if you kill

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anyone or kidnap anybody, not only in the robbery or attempt itself, but in trying to escape afterward or in confinement for that offense.

I mean, it's a very broad statute and it tends to cover anything related to the robbery.

A covers killing and kidnapping and D covers putting lives in jeopardy.

MR. MURPHY: Your Honor, if D were so broad -- if D were as broad as the Government has contends, they would not need to state that in B. So the fact that it's stated in one means it's not included in the other. So that argument fails.

THE COURT: B, A, I don't think really helps much because where you are talking about killing and kidnapping and the life sentence

MR. POLLACK: In B, Judge, you're talking about flight, flight from a crime. It's like a felony murder in the state situation.

THE COURT: It's the whole bundle.

MR. POLLACK: Correct.

THE COURT: ... B is really addressed to security of persons, and has little or nothing

to do with banks. It just happened that it's tied to the banking context probably for jurisdictional reasons. But what it really is is [illegible] and kidnaping statute over which there is federal jurisdiction if it happens in the context of a bank robbery.

MR. POLLACK: Yes, without the traditional interstate flight situation. So we are here extending the federal jurisdiction, your Honor.

MR. CORCORAN: What I was suggesting in referring to subdivision B is that B also has to do with the security of persons and it's as broad in its language as E is.

THE COURT: I think we are just stuck on when is life put in jeopardy, is it put in jeopardy before a gun is drawn simply because if unless a man of action is diverted or arrested it will be drawn and manifest to be jeopardizing lives.

When does the moment of jeopardy attach? When the first door opens or when they move toward the bank?

You see, nobody has gone

out yet. While the evidence isn't crystal clear, it indicates that nobody's weapon was visible at this point. I mean, this is the ideal way to have handled such an episode from the law enforcement point of view.

But actually, no weapon has yet appeared, not a weapon of a man who is nervous to the bank and if he was going to go in, would have had to make his mind up at what point he was going to announce the purpose.

Now, we don't know whether these men intended to go into the bank, take up positions and on signal start the robbery or what, whether they were going to go in with guns drawn or not. And that was not the subject of discussion, apparently, from anything we have heard or overheard on the tape.

So we are a little bit at sea.

MR. GORCOREN: If I can add just one further thing about the statute itself and the statutory scheme, which I think lends some weight to the argument I am making, and that is the fact that subdivision D applys to the

commis , or attempted commission of either violation of 21, 13(A) or (B).

Now, there is a distinction between (A) and (B). That is, subdivision B applys to subdivision D, your Honor, by its terms doesn't concern a situation where there is forced violence and intimidation. So, apparently the statutory framers considered it possible to violate subdivision D because they provided D, as applicable without force, violence, intimidation. Without that you could violate subdivision D if you placed lives in jeopardy.

THE COURT: I think B can be thought of as applying to the bank teller who suddenly decides he is going to take all the money in the bank and use the gun to get out of the bank.

MR. CORCORAN: Then he would be violating A -- you mean just to escape?

THE COURT: His cage.

MR. CORCORAN: I think B was so limited, your Honor.

THE COURT: You see, whoever in permitting the offense of B, that is, departing the bank with a lot of its money, though lawfully

then you add the fifth element of D, which gives you your D. So then what you do is you build D on A.

So what you have here on your momentum argument, you have D, all right, put into the offense. The ball is rolling down the hill, and if you find the condition precedent of it coming off from the preparatory stage to the attempt stage, then the whole defense of A and B falls before the jury. But that is not the case. By way of which these offenses are charged and have been charged.

THE COURT: I am aware of that because you see, as this is being argued here it seems to me the only point that we have to be whether or not there was an offense.

MR. MURPHY: Exactly, exactly, exactly.

MR. CORCORAN: They come into effect simultaneously. The offense has been committed at the same time. It's not a building process. It may be the way you construe it, but the offense is committed, both A and B at the same time.

THE COURT: Let me reserve decision

on that.

As I say, I had first thought that -- that I couldn't see any assault, and that nobody is yet -- has done anything which unequivocally spells out the use of violence at this point, the use of weapons at this point, that the count couldn't stand. In other words, my analysis of it, thinking about it beforehand on the evidence that we had through yesterday, was that the violence has got to be -- or the possibility has got to be in the attempt itself, not an attempt to commit an intimidating bank robbery, but a life jeopardizing attempt to commit a bank robbery in which it was intended to use violence or intimidation, and that that element or that you might call the extra violence, was not present or it was present -- all that was present was the capacity to rob the bank with force, violence and intimidation, and an attempt to do so, but without any opportunity or occasion to use violence in perpetrating the attempt as distinguished from the offense.

Now, then the only trouble with that argument was, or that analysis, was that

if you then look back at the language of 21, 13 (A) you find yourself in exactly the same situation again. Because the statute doesn't say whoever takes or attempts to take by force or violence. It says whoever by force and violence attempts, and thus becomes the same as did, because it required the invocation of force, violence and intimidation, to be in the attempt rather than in the taking or in the project. And at that point you went back to see what the few attempt cases were, the reported ones. We see -- I don't know how many hundreds have been charged without this aspect of them getting into the reports.

The first single one of them was again a case in which the attempt was frustrated after the intimidation, so that the attempt itself could have been the intimidation, for example, the [illegible] (phonetic spelling), the teller gets off the alarm and that's the end of it, or the robber, something goes wrong so the robber terminates the attempt without success. But the act of intimidation is already complete.

See, now here we have no

assault at all in any aspect of the case. So really, what we are trying to find out, is what do we mean by an attempt to commit an armed bank robbery.

I think if we were -- if we had a fully developed federal law of attempt, we wouldn't spend any time this afternoon, we would know an attempted bank robbery when we saw one and we would go home and start getting our arguments ready. But the fact is we are dealing with such an ill-developed law of attempt, that it's hard to figure out just what we are up to.

As you see, now the theory of which I drafted the charge on Count 1 assumes that if it is an attempt to commit the bank robbery in which force, violence and intimidation are implicit, and it's defeated before it comes to pass, if that becomes the crime, not requiring the display of force or violence or the exercise of force or violence or intimidation in the course of the attempt, or if the force, violence or intimidation must be in the attempt, then A and B are identical in the attempt case.

MR. CORCORAN: I don't think so, because the term "force, violence or intimidation" can be, but is not necessarily, synonymous by placing in jeopard, by a dangerous weapon.

THE COURT: I am saying in this case the only force, violence intimidation, assault jeopardizing of life all come back to the same thing, the men were armed and meant to use the arms.

MR. CORCORAN: Don't you have the same problem if you analyze the A and B account in the completed offense?

THE COURT: Yes.

MR. CORCORAN: Because the elements of force, violence and intimidation required to --

THE COURT: No. You see, because A fits beautifully into the case of the weapon which is not loaded, but which is otherwise fully operated. It's just intimidating -- I suppose every bank robbery is or the hope is that it's not necessary to operate any guns. That certainly makes everything more complicated.

MR. CORCORAN: When one commits a bank robbery with a weapon and is successful, you

violate A and D at the same time.

THE COURT: No, not unless the gun is loaded and operable.

MR. CORCORAN: I am assuming that.

THE COURT: Don't assume it is, because we are trying to find out why they put in both A and D. And they put them both in because you could have an unloaded weapon that was really intimidating or if you're big enough you could intimidate -- there are some people who are just that big and that tough looking. And if you could prove it, that would be quite enough under A.

MR. CORCORAN: Although a small, unintimidating person with a loaded weapon --

THE COURT: Now, look at the other aspect of the force and violence in the modern bank that has no glass, no nothing. I think they are slowly being phased out where you can just reach over the counter. You can take the teller by the arm if you're big enough and strong enough and spin them around and scoop the bills out of the bag without having any weapon. That would be force and violence. And if you throw

the fear of God into them, there would be intimidation, too. But you would not be within the D business of putting life in jeopardy. I think that's the distinction between them.

So I think what I come to, I think probably at the moment if your argument is valid as to D that both counts are good and I have to then find out what jeopardize means.

MR. MURPHY: Your Honor, I would also move to dismiss A, and that's another argument.

Now, if it goes, both goes, both the one and two go.

Now, it's difficult to argue that after a trial for days on both sides with the jury we should dismiss the whole case, although that really is the bone in the throat of anybody who is trying to do that if you are going to make that decision.

Nevertheless, the reason that the Government is unable to prove what the Government has charged, is the Government's own fault. They received notice of their factual insufficiency in the motion I made when this case began and they chose to try this case on

untenable ground and they are now -- they now must suffer the detriments of that decision.

Now, if you're going to dismiss one, you have to start with certain agreed assumptions, basically one that there is a difference between preparation and attempt.

THE COURT: I think Mr. Corcoran agrees.

MR. CORCORAN. Yes.

THE COURT: Settled law. As it turns out, the differences are aligned and drawn on water.

MR. MURPHY: That's exactly right.

And if you agree then, your Honor, that preparation is not attempt, then it's up to your Honor to draw that line or we leave it to the jury to draw that line. And if it's your Honor's function -- and it's my argument it is -- to draw that line, I would say you have preparation only in this case because you have in this case a stone brought exactly to the top of the hill and not pushed one bit over the line until the signal is given not to rob the bank -- the court might find --

or to arrest the perpetrators or to arrest the people who had taken the stone to the top of the hill because that was Rodney Campbell's let's go, and that's when they were arrested.

So under those circumstances, I think you have the philosopher's dream between preparation and intent; this case.

And I think this case is only preparation and I believe, therefore, the Court should dismiss both counts of the indictment.

MR. CORCORAN: Mr. Murphy's argument presents the Government with the situation where they would have to let the bank robbery be committed here before there would be a violation of the conspiracy.

THE COURT: Yes. That's bothered me, too.

If you invite disaster, the next time the FBI man, if he happened to have heard that decision -- I pray to God he would not have -- he would say, "Well, I guess we would have to let this roll just a little further and someone get shot."

now, I think that that's not a reason for fracturing the law.

[illegible] to have a question [illegible]. You should have [illegible], that not only would [illegible] in [illegible] conduct [illegible] preparation and intent, because we do have [illegible] overt act, [illegible] attempt. Because what may be a sufficient overt act -- and we have got the landmark screen with them [illegible] -- [illegible] brought [illegible].

Now, I think that's the [illegible].

In other words, in trying to resolve what preparation is against attempt or conspiracy against attempt, then who does it? Doesn't the court -- the court, I suppose, at some point has to do it if the facts are clear

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enough. But when are they clear enough? When must it be left to the jury?

Well, juries are constantly charged in rather uninformative terms that preparation is not attempt. It's reasonably apparent that it is often, if not usually, a question for the jury unless the case is one in which the court would on conventional ground say, well, there isn't sufficient evidence of attempt here to give it to the jury.

Now, I think it's basically a question of fact. And here where you have everything laid in place and moving right into the bank, they are parked in front of it and Mr. Sellers is moving across the front of the bank, we don't know whether he is going to go by or turn in, and at that point the whole thing is brought to a halt mercifully and without injury. That, I would have thought, is an attempt in any man's book at robbing a bank. My only real question is whether in such a case as this any of you should ever be attracted to the second paragraph of 21, U.S.C., whether it was really an attempt to enter a bank with intent therein to

commit the felony of bank robbery, I don't know.

MR. CORCORAN: Wouldn't that be a lesser included offense, your Honor?

THE COURT: No. It's the same offense.

MR. CORCORAN: It's an included offense.

THE COURT: It's not lesser, unfortunately.

MR. CORCORAN: It's an included offense.

THE COURT: Yes, but the language in the indictment, what about that? Had you, gentlemen, done -- defense gentlemen -- thought in terms of the possible applicability of the second paragraph?

MR. MURPHY: No, your Honor; for myself.

MR. POLLACK: Not for I either, your Honor.

THE COURT: See what I mean?

MR. POLLACK: You're talking about the second paragraph of it now, your Honor?

THE COURT: Yes, the second paragraph of it. That has a checkered legislative history which I have forgotten at the moment, except to remember that it has a checkered history.

MR. CORCORAN: It would also seem to make an attempted b violation and A violation, because you would be attempting to commit a robbery, you would intend to steal without force, violence and intimidation.

[illegible] to the attempt [illegible], I think if your Honor applies what I think we would all consider to a somewhat elevated standard to reach, the Bedford (phonetic spelling) test, and I think under the facts we have here the jury can reasonably draw the inference that had the defendant not been apprehended the robbery would have been completed. And since they can draw that inference, if they wish, I think it's a question that has to go to the jury. They can find from the evidence at this point in the case that Mr. Soffer was moving toward that bank with the intent to rob it. Whatever he might have done, we don't know now. But they can infer that that's what he was going to do.

And I think based on that [illegible] sufficient evidence to go to the jury on attempt.

THE COURT: Well, I think certainly we can be satisfied that he got out of the car -- and if the evidence is believed -- assuming the [illegible] the outset there was no problem of deciding whether or not there was an all clear to proceed. And we just don't know what -- at that stage of the record we don't know what conclusion he had reached. I thought -- I wonder what happened to the man that got locked in the vestibule in effect and what, if anything, [illegible] Keller [illegible] with what consequence on his plan. Because if he saw the man right up against the locked door, if we believe the testimony of Mr. Young, it might have flashed across his mind or would not whether or not Peterson's suspicion wasn't justified, and this is a very good time for him to saunter on down to 10th Avenue and take the subway home, hoping that the other four would quietly drive away. And we will never know, probably. And I have no idea, and it's not relevant at this stage.

MR. CORCORAN: I have one case where it's clear that the fact that the bank was locked did not have any affect on the bank.

THE COURT: I forget the citation.

MR. CORCORAN: Rumsfeld is the name of the case.

THE COURT: Yes, it's 425, or something recent.

MR. POLLACK: May I be excused from the courtroom for a few minutes? I asked Mr. Sellers and he said it's all right.

THE COURT: I think we are finished at this point.

Let me reserve decision on both aspects for the reasons that have become apparent from our argument here. I am reasonably convinced that the case must be given to the jury, but whether on one or both counts and on what term, I am not so clear.

Let me ask if you gentlemen have made a decision, do you mean to rest on the weakness of the Government's case or would you put on -- plan to put on evidence or haven't you reached a decision yet?

MR. POLLACK: My inclination right now is that there will be testimony adduced on Mr. Seller's behalf.

MR. MURPHY: My present inclination now is to rest, your Honor, on the weaknesses of the Government's case.

THE COURT: Well, you will let me know.

MR. POLLACK: I will make the decision tomorrow. If you would like me to communicate it to chambers, I would.

THE COURT: If you feel perfectly free to.

MR. POLLACK: I would state this to the Court: if we do present a case, I don't think it will go past the morning of Monday at the latest.

MR. CORCORAN: One practical question. Will the courtroom be locked tomorrow and over the weekend so the equipment can be left here?

THE COURT: It can be, sure.

MR. CORCORAN: We will take the machine.

THE COURT: I am not too sure if you leave expensive material like this, if you shouldn't put it in the closet. The cleaning women have access here and they don't usually lock up. But this door and that door are locked.

MR. POLLACK: Can we have a short visit for Mr. Sellers and his wife in the back, if it's all right with the marshals?

[illegible] just for one minute.

(Whereupon court adjourned.)

* * *

MR. POLLACK: Good morning, your Honor. Your Honor, I mentioned a stipulation on Thursday concerning calls made by the United States Attorney's office on behalf of Amanda Jones concerning Rodney Campbell.

I believe Mr. Corcoran and I have agreedupon the extent of the Government's stipulation with me, to the extent that the United States Government made no call to the Queens County District Attorney concerning Amanda Jones at the request of Rodney Campbell.

THE COURT: Now, wait a minute now. That sentence doesn't parse. You mean at the request of Rodney Campbell?

MR. POLLACK: Or on behalf of Rodney Campbell.

THE COURT: That doesn't make any sense at all. What do you mean that the United States Attorney's office had no communication with the County District Attorney respecting any case of Amanda Jones that was before them.

MR. POLLACK: Correct.

THE COURT: That's allthere is to the stipulation, or do you want them to stipulate that that was done at the request of Rodney Campbell?

MR. POLLACK: No, I don't want them to stipulate to that. If that's agreeable to Mr. Corcoran.

THE COURT: Is that what you understand?

MR. CORCORAN: That's agreeable, your Honor.

THE COURT: Then I think agreeable situation with respect to the second count of the indictment was alleged that considering of it, and I have pondered long and hard over Mr. Corcoran's complete argument in his support, but concluded that I must dismiss it, and accordingly the motion of the defendants to dismiss Count 2 of the indictment is granted.

MR. CORCORAN: At this time, your Honor, I would ask to hand up to the Court the request to charge.

THE COURT: Have you seen the entrapment language of the charge prepared?

THE CLERK: No. It's being copied at this moment.

THE COURT: I won't pass on this until you have seen the language I have prepared.

MR. MURPHY: Can we have a copy. Your Honor, while it's in my mind, if I might make a request that thi ourt write on the subject of the count -- the first count of the bank robbery. I believe that a writing by the Court in this matter is needed, and I think it would be of use to other attorneys.

THE COURT: I think Mr. Corcoran says, "If you write on it, I will choke you."

MR. POLLACK: I object to the threat.

MR. CORCORAN: I would agree that perhaps this area is in need of clarification. I would presume that on appeal, if there is a conviction, if the defendant is convicted on Count 2, the Court of Appeals can then consider it.

THE COURT: We are not supposed to write unless what we think is required by the rules or has precedential value. I have yet to find what precedential value the District Court decision has. It's usually shouldered out of sight very soon by the croud of other decisions of smaller value.

MR. POLLACK: Respectfully disagree. There are only a number of judges cited. Judge Metzger, the ninth, second and fifth, and Judge Frankel adopted the decision in 1972, and whatever circuit finds the same way, it's always Judge Frankel's decision cited.

THE COURT: Are we ready, gentlemen? This includes a good many replacement tapes, but the entrapment language is what page number?

THE CLERK: Around 19, 18 I think it is. Around there.

(Thereupon the jury entered the courtroom at 10:45 a.m.)

THE COURT: Very well, Mr. Pollack.

A Not at that time.

Q Did he subsequently on that day enter the apartment carrying something?

A Yes.

Q What was he carrying?

A A brown paper bag.

Q Where was he carrying it?

A Under his arm.

Q Can you describe the dimensions of the bag and the conditions you saw it?

A Well, it was wrapped up like I couldn't tell then what size the bag was.

Q And, where did Mr. Campbell go with the bag?

A He followed my husband to the bedroom.

Q And how long did they remain in the bedroom?

A Then, a minute or so.

Q And did he subsequently leave the apartment?

A Yes.

Q Was he carrying anything when he left the apartment?

A No.

Q When was the next time Mr. Campbell came into the apartment?

A Friday morning.

Q Was he carrying anything at that time?

A No. (Pause.) A MacDonald bag.

Q Did he have anything in it.

A A cup of coffee.

Q Now, did Mr. Campbell have any discussion with your husband on that date?

A None that I heard, except the last cup of coffee.

Q Did you go to -- did they go into the bedroom again?

A Yes.

Q Did you have an occasion to look into the bedroom?

A Excuse me?

Q Did you have occasion to look into the bedroom?

A In the bedroom?

Q Yes.

A Yes. I wa ed into the bedroom.

Q What, if anything, did you see on the bed?

A The bag.

Q Same bag you saw the day before?

A Yes.

Q What, if anything,unusual did you see on your dresser?

A A gun.

Q I show you People's Exhibit 14, and ask if this

was on your dresser on th morning of the 23rd? (Handing to witness.)

A Yes, it was.

Q Was there anything in the paper bag lying on the bed?

A It appeared empty.

Q Prior to the 23rd, had you ever seen this gun in your apartment?

A No.

Q Is there any place in your apartment which was locked fro- you which you did not go into during the course of your maintenance of that apartment?

A No.

MR. POLLACK: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. CORCORAN:

Q Mrs. Sellers, you say you have been married to the defendant, Johnny Sellers, for a little over a year; is that correct?

A Yes.

Q And was Mr. Sellers supporting you during that year?

A Yes.

Q And what was his source of inco-e during that

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Q Who did he leave with?

A Rodney Campbell and Young.

Q What time did he get them?

A He never did.

Q Do you know what he was doing that day?

A No.

MR. CORCORAN: Thank you. I have no questions.

MR. MURPHY: No questions.

MR. POLLACK: The defendant Sellers rests, your Honor. No further questions of this witness.

THE COURT: You are excused.

(Whereupon, the witness was excused.)

THE COURT: The Government rests?

MR. CORCORAN: The Government rests, your Honor.

THE COURT: Both sides rest. We will have a short recess now, members of the jury. Please do not discuss the case with one another until it's given to you to decide.

(Whereupon, the jury left the courtroom at 11:05 a.m.)

MR. MURPHY: Your Honor?

THE COURT: Yes, sir?

MR. MURPHY: On behalf of the defendant Stallworth,

he renews his motion to dismiss the first count on the grounds stated on last Thursday.

THE COURT: That is a move for a judgment of acquittal under Rule 29?

MR. MURPHY: That's correct, your Honor.

MR. POLLACK: The defendant Sellers, your Honor, joins in that motion.

THE COURT: I take it you oppose, Mr. Corcoran?

MR. CORCORAN: Yes, your Honor.

THE COURT: So. I think a sufficient case has been made out against both defendants, sothat the issue should be submitted to the jury for their determination. I conclude that they could without unreason find both defendants guilty beyond a reasonable doubt.

Have you gentlemen had a chance to read the Government's request of instruction with respect to entrapment? In the draft charge that I have given to you, at page 16, I think is the language taken partially from Judge Feinberg's decision, and after studying Russell, of course.

MR. CORCORAN: With regard to your Honor's charge, I have some difficulty with some language in the middle of the page. This is where the charge indicates that: "But it must not go so far as to become

itself the author of the criminal conduct."

I think the term "author" is somewhat confusing. Particularly in view of the fact that the law allows the Government to initiate an activity of this type, if the parties are predisposed, ready and willing and awaiting the opportunity. One might consider the Government of an author of a narcotics sale where the agent approaches the distributor and he is interested in purchasing narcotics. The Government is not precluded from doing such a thing.

THE COURT: What do you gentlemen say? You have seen the Government's instructions. I think about the only thing to be said in favor of the one I propose is that it's somewhat shorter.

MR. POLLACK: Your Honor, not much to my surprise, I prefer the Court's instruction. I think it is a fair and full explanation of the law of entrapment as it stands.

THE COURT: I think its merit is, if any, is close to the language of the Second Circuit, which practically dictates --

MR. POLLACK: Rumor has it they have some control over the District Court.

THE COURT: That's not the way I feel. I think that Judge Feinberg's decision was carefully thought

out, and he said exactly what was very much needed. I see nothing in Russell that changes it in the slightest, and it is for that reason, however, I quite agree with what Mr. Corcoran said. I think I tried to use one word to express an idea that that word means a lot to me, because, you see, I think in terms of copyright and all that as being the one whose crime it is.

I suggest instead of that "become itself the one responsible for the commission of the crime."

I think that's what they cannot do. And, I don't like the word "inducement." I think the Supreme Court and Judge Feinberg advises we use the word "initiation," and I think that means simply and fits right in with the idea of creating or presenting the opportunity without more, because what they are trying to do is, in a way, is to test and see if the person is the one who is responsible for.

I think I have got it right. I hope so.

Two lines below, "predisposed to that line," should be "predisposed to crime. The opportunity to commit the crime."

I think that person, in typing it out, just omitted that.

MR. POLLACK: "To commit the crime and facilitate,"

Your Honor.

THE COURT: Yes. Facilitate to the commission without going farther. Now, that is to take in count of the Russell ringfall, if you wand to call it that, of furnishing a component of the crime.

Now, if you turn back to page -- I have put in on page 5 an attempt to define, "attempt," and to differentiate planning and preparation I think I have attempted to incorporate the ideas presented, both by Mr. Corcoran. That's at page 5. The one that you have given this morning, and the ideas presented by Mr. Murphy.

On page 5, quoting from the statute, I put in two statutory words: "By force and violence, or by intimidation takes or attempts to take."

Any changes on eight are mechanical.

The changes on 9 are substantial. You might want to read that over. That really is the result of the principal part of our lengthy discussion late Thursday. I conclude that what 2113-A means, is to turn back to the statutory language that "Whoever, by force and violence or by intimidation, takes or attempts so to take." I think that's what it means and I think you can see that most clearly by continuing on to read the language of the second paragraph on

which I think concurs in that idea in the general way by altogether eliminating any need for force or violence without in any way diminishing the crime. So, as long as what is is, if a felony be committed in the bank premises, after entry against the bank or its property.

Now, that obviously encompasses the felony of bank robbery by balance.

In other words, it incorporates such a crime as the one set out in the first paragraph of A, when you think of B, in terms of an attempt, and it does include the language, so it would seem to me that the essential thing we have to deal with, whether it's planned as a bank robbery by force, to be effected by force or violence or intimidation.

Did they decide to go ahead with it and did they go far enough to be as distinguished from merely a crime.

That's what I propose then to charge, gentlemen, unless I hear from you to the contrary.

We filled out page 100 with the names of the witnesses. Do you defendants wish to have your constitutional rights stay off the standard charge, both of you?

MR. POLLACK: Yes, your Honor, the defendant

Sellers does.

MR. MURPHY: Yes, your Honor.

THE COURT: And then, if so, if you will turn to page 51-A, the way I think it's best handled is to split 51-A and put the page 60 charge in, and then wind up with, "The defendant is presumed to be innocent." That was suggested by the defendants' counsel as making the rationality of the charge about staying off the witness stand more understandable --

MR. POLLACK: That is agreeable to defendant Sellers, your Honor.

THE COURT: Do you follow that, Mr. Murphy?

MR. MURPHY: If it comes after aiding and abetting, your Honor.

THE COURT: Yes. And then continues after the charge on page 60 with the remaining paragraph from 51-A concerning the presumption.

Now, of course the paragraph on the middle of page 206 will be stricken out.

Now, there was references to earlier statements. Are they significant enough in your judgment to warrant the inclusion of pages 209 and 209-A? I don't really think we have much in the way of prior consistent statements. What is your recollection? I don't know any sense that you gentlemen use prior

and consistent statements to a great extent. I think really we are using more of a refreshing recollection than doing any more than that from the transcript to the tapedmaterial. I don't like to charge things that have any tendency to have the jury wonder why they are in there and start looking for something to apply them to. Can you think of anything, Mr. Corcoran?

MR. CORCORAN: I can't think of any, your Honor. I believe it's really an issue.

MR. MURPHY: Your Honor, Agent Murphy's statement as to whether the defendant Sellers started out towards the bank or did not start to the bank is the only item like that which I think this charge pertains to.

MR. CORCORAN: I don't recall there being any statement presented to Mr. Murphy with regard to that fact.

THE COURT: Yes. I remember that there's testimony to wit. Was he cross-examined on 302 of that?

MR. MURPHY: He was, your Honor, on his testimony given on the stand he stated that defendant Sellers had taken several steps back towards the bank at the time that he was arrested, and his 302, he says had started moving back toward the bank at the time that

he was arrested. Of course, exactly what sort of purpose or steps toward the bank that the defendant Sellers made is really the issue in this case.

MR. CORCORAN: I recall Mr. Murphy reading his last sentence on 302, but no questions follow it, and at the moment it seemed there was inconsistency. Certainly, it was not pointed out to the jury.

THE COURT: What I really mean is that I am not at all suggesting that there is any limitation on closing argument. What I have been inquiring about is whether there is an occasion to put in a page and a half in accordance with 209 and 209-A, rather than leave that matter to be argued raw, because, see, when you put the instruction in --

MR. MURPHY: I would think it be better, your Honor, to leave it out,unless, for any reasons the Court wants to put it in. But, I have no objection to leaving it out.

THE COURT: I think we might be better to leave it out, because I think it really fits the case where there's been substantial changes in the witness and the witness picked out certain things, and he said, "I remember saying that. That's right." All that sort of thing.

MR. POLLACK: Judge, I would agree that it's

not appropriate to this case.

THE COURT: We treated only on page 211-A, previous conviction of crimes. That was to Rodney Campbell. I take it that should be in. That's a brand-new page.

MR. MURPHY: I don't think we have 211-A, your Honor.

MR. POLLACK: I have it, your Honor.

THE COURT: You should have it, it's the new page that was handed out this morning. Did you get cheated, Mr. Murphy? You are entitled to 211-A.

MR. MURPHY: No object to that, your Honor.

MR. POLLACK: Judge, has the Court any instructions handling the consideration given to the witness Campbell in return for his testimony?

THE COURT: Well, see, I leave that in general language; "All inducements affecting his testimony," and let counsel argue about the nature and value of them. We would charge page 212, that Willie Young was an accomplice. I think we would be safe in commission of the alleged attempt. Is that the appropriate thing to say?

MR. POLLACK: Judge, that goes to the very problem we talked about earlier about having Young's guilty plea to the charge in question brought before

the jury. How will the jury be kept [illegible] of Young's acknowledgement of his own guilt as against when the defendant denies any guilt in the matter. That is the true area we have to protect against in this charge.

THE COURT: That is why I say to make him an accomplice in commission of the alleged attempt. The point is, that an accomplice who is, in seeking a light sentence in exchange for his testimony, is suspect for that reason. I don't think there is really a question whether there was a crime or not; whether there was a charge or not.

MR. [illegible]: Judge, considering the tenor that I anticipate the presentation will take for the defendant Sellers, I would be just as happy if this was left out of the charge.

THE COURT: The whole page? I think that maybe one thing that you --

MR. CORCORAN: What page?

MR. POLLACK: Page 212.

THE COURT: Mr. Corcoran might be disposed to agree upon, but I think the problem is whether that's one of those things of if there was conviction of the defendant, the Court might think it was unthinkable. That should just simply -- we would treat that as a

mistake made in the haste of the moment, just generally the charge with regard to that's so important to defendants.

MR. POLLACK: Your Honor, I am speaking only for the defendant Sellers, at this point, and I specifically -- I told the defendant exactly what the recourse of my action would be, how I thought it would affect him, and I believe he is in agreement with me, because basically I think as far as the defendant Sellers is concerned, Willie Young helped and told the truth, and so I am not going to try to discredit Willie Young, but the fact what he testified to, involving what happened, which he would have knowledge of, if this trial was brought out, will probably be admitted to in summation.

The issue that is going to be raised is the relationship between the parties and the inducement that such relationship could have caused. On that basis, I see no basis to undercut it. I believe brother counsel --

MR. MURPHY: I object to its deletion, your Honor.

THE COURT: Well, I think it's going to be either in or out, and I don't see how against a request for its inclusion by any defendant I can properly leave

it out.

MR. POLLACK: Your Honor, I certainly don't want to prejudice Mr. Stallworth' rights. I agree with the Court. I would ask for a conclusion now.

THE COURT: Gentlemen, I have a doctor's appointment at five o'clock which would require me to leave here about 4:10. That is, counsel, I am sure that some kind of a cancellation would have a very angry doctor, but sometimes it's, you know, for us lawyers to get back at doctors, but, if I had been told that one of counsel had to be in the Southern District at 4:30.

MR. POLLACK: Judge Knapp, your Honor, has set a pretrial conference in the matter at 4:30. If the Court adjourns early it will be amenable to me. If not, I would ask the Court to once again intervene for an adjournment on my behalf.

THE COURT: How long do you anticipate that the Government's closing argument will be, Mr. Corcoran?

MR. CORCORAN: Our initial argument, your Honor, will probably be no longer than a half hour.

THE COURT: Remember you are not allowed to say anything, because if they don't speak, that's it. And, if they don't say anything except, "No," that's it. It's only if they throw out some new ideas that

you are allowed to apply.

MR. POLLACK: Your Honor, in scheduling time, I would like to bring to the Court's attention that I am due at the Second Circuit at 10:30. Judge Metzner has me at 2:00 to start trial.

THE COURT: You want to want?

MR. POLLACK: If it's going to be over today, I need the Court's intervention tomorrow with Judge Metzner to put the case over there over to Wednesday morning.

THE COURT: Well, then I take it we will go as far as we can today until when? Can you get out of this morning before Judge Knapp?

MR. POLLACK: It's a pretrial conference, your Honor, and a juvenile matter. I am sure if your Honor calls Judge Knapp he will adjourn it.

THE COURT: Then we can go on to 5:30.

It's the time I ordinary excuse the jury for the evening.

MR. POLLACK: If the Court's going to do that, I ask for permission -- I have to call my office and find out if we are going to be on.

THE COURT: All right.

MR. POLLACK: I am sorry for the problems.

THE COURT: Then I will go ahead until 5:30

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today, and then tomorrow. Call Judge Metzner and tell him the plan of giving the case to the jury today, if we can. How long do you think the defendant's closing argument will take? I am fond of telling lawyers that there was a famous preacher who was advised all on Sunday that no souls are saved the first 20 minutes. I see all the churchgoers grinning from ear to ear thinking that.

MR. CONCOBY: Your Honor, may I have five minutes just to set up?

THE COURT: Yes.

MR. MURPHY: I really don't know, your Honor, I would say no more than 40 minutes, and perhaps substantially less than that.

MR. POLLACK: I have the -- Judge, I would say I am going to try and keep it within a half hour in the out-side arguments, but as the Court --

THE COURT: We have a short recess now for the telephone calls, and you want to make a mechanical set-up here?

MR. CONCOBY: Yes.

MR. MURPHY: Just for the record, your Honor, defendant Stallworth has no objection to the charge as set forth in the rules.

THE COURT: All right.

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MR. CORCORAN: It was kind of equivocal.

MR. POLLACK: What I asked the Court in this charge to tell the jury, this is an aid. It's on the tape, which at best, this has been read to them extensivel and the portions that are inaudible.

THE COURT: There are lots of portions of the tape which have not been transcribed. Some of them would hurt them.

MR. POLLACK: That's true.

MR. MURPHY: Your Honor, I do have one objection to make on the charge, unfortunately.

THE COURT: Page?

MR. MURPHY: Page five.

The second point, "The defendant or defendants must be shown to have taken substantial and purposeful steps toward committing the crime, and those steps must be ones that are not reasonably explainable except as steps toward committing the crime."

I think that shifts the burden on to the defendant to explain the steps, rather than seeing it where it should be on the Government. I object to that.

THE COURT: I can't agree with you. I think I have been sedulous in avoiding the imposition of burdens or proof or use of the burden of proving. Any way, that says that the "Defendants must be shown," not that

they must show. Of course, they wouldn't.

MR. MURPHY: Also, Your Honor, that paragraph really vitiates the planning and preparations. Since obviously you could plan a bank robbery, which would have no reason for doing it, except to plan the bank robbery, and yet not have committed the crime of attempt. In other words, --

THE COURT: No. All this says is, and this is the classic definition of underlying constituants of this attempt that has a mental and physical component. There has to be a ripened and specific intent, and there has to be one step or more steps in execution. How I have attempted to do that, in the light of more recent discussions in 949 F 2nd that I pointed out to you is to explain that you don't take steps unless they are unequivocally connectible with the intent.

In other words, if they go to a house and plan a bank robbery in Whitestone and leave the house and take the subway to get to Astoria, they are still together, it's a step or a step in the wrong direction, so that then doesn't have anything to do with robbing the bank. I mean, that's all we're talking about here. I think in the next part I put in. Limitation is on that, and the remainder of it, and in the remainder of it I tried to keep it very specific. I think in the

Government's point of view, Mr. Corcoran has assumed really kind of a burden in saying that if in effect that an attempt is complete, which implies it's not early, to complete, so far as that, only the F.B.I. can stop it, which they are more than entitled to, because the law, whether it should or should not, goes a good deal farther and gives you the impression that you can be home in bed and guilty of an attempt of the crime. They know you planned in bed.

It goes that far, and I would suggest that probably the reason for it is premium unprevention. Mr. Corcoran suggested there was a premium unprevention, and presumably, all these things will wash out in sentence, rather than in dilution of the concept of guilt. I don't know.

MR. POLLACK: Are we going to have a recess now?

THE COURT: Just a moment or two.

(Whereupon, a recess was taken at 2:40 P.M.)

(continued next page)

A:BD 1/7

Charge of the Court

(Whereupon the jury entered the courtroom at 2:50 P.M.)

THE COURT: Members of the jury, there have been again in the closing arguments, reference to the transcript. You must bear in mind that the transcript is not the primary evidence. That the evidence is what you heard on the tapes when they were played to you, and the sworn testimony of the witnesses who said that they were participants in the transactions which are to the extent that they are reflected in the tape recordings.

You have heard the evidence in the case and the arguments of counsel and I now must receive the instructions on the law that governs the case.

You, the jurors, are the sole judges of the facts. You must, however, follow the law as given to you in these instructions and apply it to the facts, as you find them from the evidence before you. You are not free, nor am I, to substitute our private judgments as to what the law should be for what the law in fact is.

You have been sworn as jurors well and truly to try this case and to render a true verdict. You must therefore exclude from your deliberations all

bias and prejudice. You must not permit yourselves to be governed by sympathy or any other considerations not found in the evidence and these instructions on the law.

The issues of fact to be tried are those made by the indictment and the defendants' pleas of "not guilty." Bear in mind that the indictment is the formal method of accusing a person of crimes; it is not itself evidence that a defendant committed the crime charged, nor is the fact that the indictment was found any evidence of guilt.

As you are aware from the evidence, it is not claimed that the defendants or either of them entered the bank on the day in question. They were taken into custody outside the bank. The charges made, accordingly, are charges of attempts to commit bank robbery. The first thing, then, is to be clear about what conduct amounts to an attempt to commit a crime when, for some reason, the crime is not committed.

Plainly, two things are essential: first, the defendant or defendants must be shown to have definitely determined to do those things which constitute the crime, and second, the defendant or

defendants must be shown to have taken substantial and purposeful steps toward committing the crime, and those steps must be ones that are not reasonably explainable except as steps toward committing the crime.

Planning and preparation do not amount to an attempt. Beyond planning and preparation, it must be shown that the defendant or defendants have taken substantial steps to carry the plan into actual execution. The attempt is complete if the actions which the defendant or defendants are taking are such that they will result in the commission of the crime if not interrupted by an unanticipated circumstance or intervention that prevents the commission of the crime planned.

We turn then to the statute involved and to the indictment to see precisely what it is that constitutes the crime that the defendants are charged with attempting to commit.

Count 1 is drawn under subdivision (a) of Section 2113 of Title 18 of the United States Code, which provides, so far as is here relevant, "whoever, by force and violence, or by intimidation takes or attempts to take from the person or presence of

another, any money in the care, custody, control, management, or possession of, any bank ...

"Shall be fined or imprisoned or both."

Count 1 reads thus, and only Count 1 will be submitted to you.

"On or about the 23rd day of January 1976, within the Eastern District of New York, the defendants Larry Peterson, Clarence Stallworth, Willie Young, Jr., and Johnny Sellers did knowingly, wilfully and feloniously, by force, violation and intimidation, attempt to take from the person and presence of employees of the First National City Bank, 7-24 154th Street, Queens, New York, a quantity of money and other things of value, which money and things of value were in the care, custody, control, monagement and possession of the said First National City Bank, 7-24 154th Street, Queens, New York. The deposits of this bank were then and there insured by the Federal Deposit Insurance Corporation.

As explained earlier, the word "bank" means a bank, the deposits of which are insured by the Federal Deposit Insurance Corporation. Since the parties have stipulated the fact, there is no question

that the deposits of the First National City Bank were insured by the Federal Deposit Insurance Corporation.

There are two defendants here on trial. You must consider the evidence separately as it affects each defendant. Your verdict need not be the same as to both defendants for you may find that the evidence differs as to each defendant. To emphasize this, I will in general speak of "the defendant" in these instructions.

The essential elements of Count 1 of the indictment, all of which the Government must prove against the defendant whose case you are considering beyond a reasonable doubt, or else you must acquit him on the following:

First, the defendant and one or more of the others named in the indictment planned that they would, acting together, take money that was in the possession of the bank employees;

Second, the defendant and one or more of the others named in the indictment planned to take the money from the bank employees by force or violence or by intimidating them; and

Third, that the defendant, acting with the

others in accordance with their plan and with the purpose of carrying it out, took substantial and purposeful steps toward committing the robbery.

If the Government proves each of these three essential elements beyond a reasonable doubt, you will return a verdict of guilty against the defendant whose case you are considering. If the Government fails to prove any one or more of the essential elements beyond a reasonable doubt, then you must return a verdict of not guilty as to the defendant whose case you are considering.

The crime defined by this statute requires proof "and the indictment alleges" that the defendant's intention, his conscious determination was to take money from the person or presence of another person, and to take money in the custody or possession of the bank, and to use force, violence or intimidation in doing so. The Government must establish this purpose beyond a reasonable doubt, for example by showing that the defendants used words among themselves beforehand indicating that they planned to use words and perform acts which would produce a fear of bodily harm in the ordinary person in the position of the bank employees

as a means of getting the employees to do what they wanted to do, that is, to pass the money over to them. In this connection you would consider also the evidence, if any, of each defendant's acts and his possession or non-possession of a weapon.

You must consider the evidence and determine from it whether the Government has proved all of the essential elements of the offense beyond a reasonable doubt. If you conclude that the Government has proved all three elements, your verdict on Count 1 will be guilty. If you conclude that the Government has failed to prove any one or more or all of the essential elements of Count 1, then you must acquit the defendant on Count 1.

Now, whereas in the present case, several persons are charged together with the commission of an offense, the Government is not required to prove that all of the defendants or any one of the defendants alone did all of the things required to make out the offense. On the contrary, under the law as embodied in Section 2 of Title 18 of the United States Code, all those who aid and abet the commission of an offense or cause an act to be done which if directly performed would be an offense are

treated as equally guilty of the crime, that is they are punishable as principal offenders. Hence, if a person voluntarily unites his efforts with those of others to bring about the commission of a crime, he is equally guilty with all of the others and they with him, provided he is conscious of the nature of the criminal venture and intentionally associates himself in its furtherance and actively participates in bringing about the accomplishment of the criminal venture.

Let me repeat what I said earlier about "attempt", for keep in mind that we are dealing with an attempt.

Plainly, two things are essentially: first, the defendant or defendants must be shown to have definitely determined to do those things which constitute the crime, and second, the defendant or defendants must be shown to have taken substantial and purposeful steps towards committing the crime, and those steps must be ones that are not reasonably explainable except as steps toward committing the crime.

Planning and preparation do not amount to an attempt. Beyond planning and preparation, it

must be shown that the defendant or defendants have taken substantial steps to carry the plan into actual execution. The attempt is complete if the actions which the defendant or defendants are taking are such that they will result in the commission of the crime if not interrupted by an unanticipated circumstance or intervention that prevents the commission of the crime planned.

A reference has been made in connection with the evidence of Rodney Campbell's activities, to entrapment by the Government. If you find some evidence that the Government initiated the illegal conduct of the defendants, then the Government must establish beyond a reasonable doubt that the defendant whose case you are considering was ready and willing to commit the crime. The thought is that the Government may properly obtain evidence of crime by using informers and undercover agents and the like in enforcing the law, but it must not go so far as to become itself the one responsible for the commission of the crime. If the Government does no more than furnish to those already predisposed to crime the opportunity to commit the crime or facilitates its commission without going farther, and if it proves beyond a reasonable doubt that the defendant whose

case you are considering was predisposed to and ready and willing to commit the crime, then you will convict notwithstanding the evidence that the Government initiated the illegal conduct. If the Government fails to make that proof as to the defendant whose case you are considering, then you must acquit him.

Let me now repeat the essential elements of Count 1 of the indictment, all of which the Government must prove against the defendant whose case you are considering beyond a reasonable doubt or else you must acquit him are the following:

First, the defendant and one or more of the others named in the indictment planned that they would, acting together, taking money that was in the possession of the bank employees;

Second, the defendant and one or more of the others named in the indictment planned to take the money from the bank employees by force or violence or by intimidating them; and

Third, that the defendant, acting with the others in accordance with their plan and with the purpose of carrying ti out, took substantial and purposeful steps toward committing the robbery.

If the Government proves each of these three

essential elements beyond a reasonable doubt, you will return a verdict of guilty against the defendant whose case you are considering. If the Government fails to prove any one or more of the essential elements beyond a reasonable doubt, then you must return a verdict of not guilty as to the defendants whose case you are considering.

The term "reasonable doubt" is used repeatedly in these instructions.

Proof beyond a reasonable doubt is not proof to an absolute certainty. Few things in life can be so proved. Proof beyond a reasonable doubt is such proof as you would be willing to rely and act upon in the most important of your own affairs. If, after carefully weighing all of the evidence you have an abiding conviction of the truth of the charge such that you feel conscientiously bound to act upon it, then you would be free from reasonable doubt. If, however, after weighing all the evidence, you have such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves, such a doubt would be a reasonable doubt.

That does not mean that each bit of the Government's evidence must be found by you to be true

beyond a reasonable doubt. It means rather than in sum total the Government's evidence must satisfy you beyond a reasonable doubt and to each element of the crime charged, or you must acquit.

A reasonable doubt may arise not only from the evidence produced, but also from the lack of evidence. Since the burden of proof is always on the Government, a defendant has the right to rely on the failure of the Government to prove any essential element of the charge. A defendant may rely too on evidence brought out on his cross-examination of witnesses called by the Government. The law does not impose on a defendant the burden or duty of producing any evidence.

Under our law a defendant has a constitutional right to remain silent. No inference unfavorable to the defendant can be drawn from that fact. Your deliberations accordingly must exclude consideration of or reference to the matter and must concern itself solely with the evidence before you.

A defendant is presumed to be innocent and that presumption accompanies him throughout the trial. It continues unless you are satisfied on all the evidence that the Government has proved

the defendant's guilt beyond a reasonable doubt.

I will not summarize the evidence.

You have heard eight witnesses. To name them in the order in which they testified:

Rodney Campbell, Willie Young, James Murphy, Jerry Morganson, Edward Walker, William Augustitis, Joseph Martinolich and Joanne Sellers.

Forty-three exhibits have been received in evidence.

I have said that you must decide the case on the evidence.

The evidence is the testimony of these witnesses and the exhibits received in evidence. Statements and arguments of counsel and answers stricken from the record are not evidence.

The evidence includes, of course, what is brought out on cross-examination as well as what is testified under direct examination.

Your verdict must be based on the evidence. But in your consideration of the evidence you are not limited to the bare words of the witnesses and the bald facts that you find have been proved. The evidence includes the inferences reasonably to be drawn from the testimony which you hear and the

facts which you find have been proved.

You are the sole judges of the credibility of the witnesses. The motives and state of mind of each witness as they appear to you and the cirsumstances and inducements under which the witness testified are to be taken into account. Consider any relation each witness may bear to either side of the case and the manner in which the verdict might affect him.

You may consider the appearance and manner of each witness on the witness stand, the witness' apparent candor or lack of it and the character of the testimony given, whether the testimony contains inconsistencies or discrepancies,whether it is intrinsically credible or seems to you in whole or part improbable, and whether it conflicts with other testimony or is consistent with other testimony in the case.

In weighing the effect of conflict or discrepancy consider whether it pertains to a matter or importance or to unimportant details and whether it seems to you to result from innocent error or from falsehood. I fyou find a witness has been mistaken or untruthful, in all or in part of the

testimony given, then you may give the testimony of that witness such credit, if any, as you think it deserves in the light of the nature and extent of the defects that you find in it.

(continued next page)

Ahb

Charge

If you conclude that a witness has knowingly testified falsely concerning any material matter, you have a right to distrust that witness' testimony in other particulars. You may reject all the witness' testimony or give it or parts of it the credence you think it deserves.

In considering the credibility of a witness you make take into account the fact that he has been previously convicted of a crime or crimes. You may also take into account that a witness has admitted the commission of other acts that were in violation of the law.

You may conclude that the testimony of Willie Young, if accepted by you, would make him an accomplice in the commission of the alleged attempt. An accomplice is one who joins another in the commission of a crime voluntarily and with common purpose. An accomplice does not become incompetent as a witness because of his participation in the criminal acts charged.

On the contrary, if the only evidence on some or all of the essential elements of any counts is the testimony of an accomplice, it may still be of sufficient weight, if you believe it, to sustain a verdict of guilty without corroboration in or support

of other evidence. Yet, bear in mind that accomplice testimony is to be received with caution and weighed with care. You should not convict on unsupported accomplice testimony unless you believe that testimony beyond a reasonable doubt.

I have sought not to comment on the evidence or to give any impression as to my own view, if I have one, of the relative weight of the evidence. If I have done so, however, you may disregard it entirely, for you are the sole judges of the facts.

From time to time in the course of the trial objections have been made and rulings on evidence given. Draw no inferences from the comparative frequency of objections of one or the other side or from the comparative record in having objections sustained. Where an objection to a question has been sustained, disregard the question and draw no inferences from its wording about the answer that may have been given.

Where an objection is overruled, evidence then received has no special weight just because unsuccessfully objected to.

Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching

agreement if you can do so without doing violence to individual judgment. Each of you must decide the case for yourself but do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. Your task is one of conscience, and pride of opinion has no place in the matters of conscience.

But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

The form of your verdict, which must be given separately on each count for each defendant, is simple. Your verdict must be either guilty or not guilty, it must be given separately for each count as to each defendant, and it must be a unanimous verdict on each count as to each defendant. Your verdict need not be the same on all counts as to any one defendant, nor need the verdict on any count be the same as to all defendants.

Your verdict on each count will be delivered orally here in open court by your Foreman in response

to questions which the Deputy Clerk of the Court will address to him.

You are not partisans -- you are judges -- judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case. When you have reached a verdict and you are ready to report, simply advise the Marshal that you have reached a verdict without disclosing orally or in writing what that verdict is.

Your verdict must not be disclosed to anyone before you deliver it orally in the courtroom in response to the questions of the Clerk of the Court.

If you wish to communicate with the Court, do so in writing, using the Foreman, Juror No. 1, as your intermediary and spokesman. Notify the Marshal when you have any such communication.

There will now be a short recess during which counsel will review the charge with me to make certain that nothing has been omitted or misspoken. Then you will retire to the jury room to deliberate your verdict.

Now, please do not start discussing the case yet, because the alternates are still with you, and at this point they will separate from the jury and

will not be part of the jury, except if something happens between now and when you come into the courtroom.

Miss Kahana, will you bring your coat with you when you return to the courtroom.

THE CLERK: Please rise.

(Whereupon, the jury left the courtroom at 3:25 p.m.)

THE COURT: Yes, sir.

MR. CORCORAN: Your Honor, I may have my pages misplaced, but I didn't seem to have heard you read pages 209 and 209a.

THE COURT: Yes. Those we had decided against reading.

MR. CORCORAN: I am sorry. Mr. Murphy changed --

MR. MURPHY: No. You did read the parts to Willie Young being a conspirator.

THE COURT: No. These are the ones on prior contradictory statements.

MR. MURPHY: No. I withdraw that, your Honor.

MR. CORCORAN: Thank you, your Honor.

THE COURT: Did you gentlemen, either of you, have requests or suggestions to objections to which you object now as to the acceptance of the charge as

delivered?

MR. POLLACK: No, Judge, not for the defendant Sellers.

MR. MURPHY: No, your Honor. Other than what I said before.

THE COURT: Well then you do renew the one as to definition of "attempt"?

MR. MURPHY: I do, your Honor. That one.

THE COURT: And then your request on entrapment has been docketed and filed, and I don't know how it could ever come up, but you still think it's the right way to do it?

MR. CORCORAN: I thought that the entrapment charge was fine.

THE COURT: I thought it had a little bit too much of the theoretical language of the cases in it explaining about it, but we will never get the entrapment charge right if we live to be a thousand.

MR. MURPHY: Your Honor, as I listened to the charge, I just -- I think that the elements of the crime should really include the definition of "attempt," rather than sort of being in the alternative.

THE COURT: I think I did it as effectively as I could in reincorporating the charge and the

essential elements of the crime as given, and have not used the word "attempt" itself, but have used the ideas which are incorporated in the definition of "attempt," as well as I could.

MR. POLLACK: Your Honor, I agree that it's not only as well as can be. I just say that both the attempt and elements should be together, and if there was a question from the jury, I would ask that your Honor --

THE COURT: I have more or less been bound on that.

MR. MURPHY: O.K.

THE COURT: Have we got some Marshals just to take charge of the jury?

THE MARSHAL: Yes.

(Thereupon, the jury entered the courtroom at 3:30 p.m.)

THE COURT: There will be no additional charge, mind you, members of the jury. So you will now retire and enter upon your deliberations.

Ordinarily, the practice of the courtroom is that the jury deliberate until 5:30 and then goes home for dinner and a night's sleep under a very strict instruction as to how each member of the jury must

conduct himself or herself, and if you would prefer not to do that but to stay with the case later than 5:30 and into the evening, well, indicate that when the time comes.

But, the point goes that you are not to hurry your deliberations in order to avoid being kept late and having to worry about whether you will be kept overnight or locked up or anything like that. That will not happen, if that is a hardship on any member of the jury at all. So, don't have that on your mind, but give to the case the deliberation it requires, and that each party is entitled to exact and equal justice at your hand.

If you will retire to the jury room. I believe you can give them each a copy of the indictment, and Miss Kahana and Miss Kavanough will be excused at this time.

Wait a minute. I forgot to have the Marshals sworn. Then you will be placed in the custody of the Marshals for the first time in your life.

(Whereupon, the Marshals were sworn by the Deputy Clerk of the Court.)

THE CLERK: Please rise.

(Whereupon, the jury left the courtroom at 3:35 to begin deliberations.)

MR. MURPHY: Off the record, your Honor?

THE COURT: No. Let's straighten out a few mechanical details.

If the jury wants exhibits, and let's lay the tape playing aside for the moment with the tapes, I hope the firearms are all completely unloaded and everything else.

MR. CORCORAN: They are unloaded.

THE COURT: And that it will be all right for Mr. Walsh to deliver exhibits to the jury without them calling in. If they want anything read, we will have to do that here in the courtroom, of course.

MR. CORCORAN: We will just remove the ammunition from the exhibits at this time, so it's not tempting.

There is separate ammunition there that shouldn't go into the jury room.

THE COURT: Or else they might check up on the FBI's ability. Unless for some reason or other that they can explain to us, we would not send in either the guns or the ammunition, and if there is some reason, if a jury thinks that he notices there's a difference between the caliber of the ammunition and the caliber of the weapons, let him conduct a supervised examina-

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tion.

Now, if substitute or additional Marshals or relief Marshals need to be sworn, that sometimes happens, even Marshals like to go to dinner once in a while, is it all right if Mr. Walsh swears them in our absence?

MURPHY: Yes, sir.

THE COURT: Finally, messages ordinarily they have passed out to the Marshals, the Marshal shows to me, if they look like completely innocent family messages, and they all have so far in my experience, is it all right if I simply authorize the Marshal to make the phone calls without calling you in, because if there is anything suspicious about the message, we take that up with you separately. The jurors are not allowed to make the phone calls themselves. The Marshals do.

MR. POLLACK: That's agreeable, your Honor.

MR. MURPHY: Yes.

MR. CORCORAN: Yes.

THE CLERK: Can I get counsel together and check the exhibits?

THE COURT: Yes. Will you do that.

THE CLERK: Please rise.

(Whereupon, the Judge left the courtroom at

3:40 p.m.)

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(Time noted: 4:55 p.m.)

THE COURT: We have a note from the jury. It says they have reached a verdict.

THE CLERK: Court's Exhibit 1, jury note, marked.

(Whereupon, the jury entered the courtroom.)

THE COURT: We have your message, members of the jury, saying that you have reached a verdict.

Mr. Walsh.

THE CLERK: Mr. Foreman, ladies and gentlemen.

Mr. Foreman, how do you find the defendant Clarence Stallworth, guilty or not guilty?

THE FOREMAN: Guilty.

THE CLERK: How do you find the defendant Johnny Sellers, guilty or not guilty?

THE FOREMAN: Guilty.

THE CLERK: You say you find the defendant Clarence Stallworth and the defendant Johnny Sellers guilty, and so say you all.

MR. POLLACK: Can I ask the jury be polled, your Honor?

THE COURT: Will you please poll the jury.

THE CLERK: Mr. Foreman, ladies and gentlemen. You have heard your verdict as the Court has reached

it, finding the defendant Clarance Stallworth and the defendant Johnny Sellers guilty as charged.

Mr. Foreman, is that your verdict?

THE FOREMAN: Yes.

THE CLERK: Second Juror, is that your verdict?

JUROR NO. 2: Yes.

THE CLERK: Juror No. 3, is that your verdict?

JUROR NO. 3: Yes.

THE CLERK: Juror No. 4, is that your verdict?

JUROR NO. 4: Yes.

THE CLERK: Juror No. 5, is that your verdict?

JUROR NO. 5: Yes.

THE CLERK: Juror No. 6, is that your verdict?

JUROR NO. 6: Yes.

THE CLERK: Juror No. 7, is that your verdict?

JUROR NO. 7: Yes.

THE CLERK: Juror No. 8, is that your verdict?

JUROR NO. 8: Yes.

THE CLERK: Juror No. 9, is that your verdict?

JUROR NO. 9: Yes.

THE CLERK: Juror No. 10, is that your verdict?

JUROR NO. 10: Yes.

THE CLERK: Juror No. 11, is that your verdict?

JUROR NO. 11: Yes.

THE CLERK: Juror No. 12, is that your verdict?

JUROR NO. 12: Yes.

THE CLERK: Jury polled.

THE COURT: I believe, members of the jury, that that completes your service as jurors at this term of court. On behalf of the other judges and counsel on this and all the cases, I want to thank you for your service as jurors, and I assure you that no matter how particular cases end, all of us rejoice in your serious and deliberate attention to this.

Finally, and most important, you have played a critical part of the whole administration of justice.

Now, if you ask lawyers to work in the courts, what's the important part of the system? They don't tell you. The Court tells you. It's the jury system, and when you hear people talk about abolishing the jury system, you can bet your bottom dollar that it's not lawyers who try cases or judges who preside over jury trials or saying they must be other people, so we all know that the jurors in the jury system are the keystone in the arch of justice. I say that on behalf of the lawyers who have just lost a verdict in this case as well as those who prevail, because what want is deliberation even after justice. If errors are made by the Judge in his charge, though, to be corrected in another place, but they have got to feel

confident that the jurors are deciding cases on the evidence, and that confidence never fails, because what we do get and we are deeply grateful to you.

Thank you.

THE CLERK: If any of the jurors need an attendance slip for their employer, they will give them the name and they will be mailed tomorrow.

THE COURT: O.K.

THE CLERK: Please rise.

(Whereupon, the jury left the courtroom at 5:00 p.m.)

MR. POLLACK: Your Honor, may all motions be reserved until the day of sentencing?

THE COURT: Yes. If you have anything specific in mind other than the general renewal of the motion to acquit, will you be good enough to reduce it to writing at least two weeks before sentence day, estimating sentence day as being six weeks from today. It may not be, so if you do have something more than just making the motion to keep Mr. Sellers' rights alive on motions already made something new and additional to reduce that to writing.

MR. POLLACK: Yes, sir.

THE COURT: One month from today.

Mr. Murphy, the same deal?

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

Margaret Nolan being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 475-43 St., Brooklyn , N. Y.

Check Applicable Box

[X] Affidavit of Service By Mail — On August 27, 19 76 deponent served the within Joint Appendix of Appellants upon U. S. Attorney for EDNY, Attn. Paul F. Corcoran, AUSA attorney(s) for Appellee USA in this action, at 225 Cadman Plaza East, Brooklyn, N. Y. 11201 the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

[ ] Affidavit of Personal Service — On 19 at deponent served the within upon the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on August 27, 1976

Margaret Nolan

The name signed must be printed beneath

Margaret Nolan

Commission Expires